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ABSTRACT

In October 1989 the Texas Supreme Court declared the public school finance system unconstitutional in "Edgewood ISD (Independent School District) v. Kirby" and required implementation of a new system by September 1, 1990. Four special legislative sessions resulted in the enactment of SB 1, which revises the school finance system and makes other changes affecting governance and accountability. Provisions of SB 1 are summarized in this legislative report, which reviews appropriations for fiscal year 1990-91 to finance public education and alleviate a budget shortfall in the social service agencies and describes the revenue measures enacted to finance the additional spending. An update on the July hearings before the state district court in Austin on the compliance of SB 1 with "Edgewood" requirements for an equitable system is also included. Other new laws are summarized, which cover criminal justice, natural resources, higher education, transportation, miscellaneous measures, and local bills. (LMI)

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WRAP-UP OF THE 1990 SPECIAL SESSIONS ON PUBLIC EDUCATION

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July 31, 1990 Number 160

WRAP-UP OF THE 1990 SPECIAL SESSIONS ON PUBLIC EDUCATION

In October 1989 the Texas Supreme Court in Edgewood ISD v. Kirby declared unconstitutional the state system of financing public schools and required that a more equitable system be in place by Sept. 1, 1990. Gov. William P. Clements, Jr. called the 71st Legislature into four special sessions beginning Feb. 28 to consider revisions in the state public education system.

After meeting 93 days in four called sessions, the Legislature enacted SB 1 by Parker et al. (Glossbrenner), revising the school-finance system and making various other changes affecting the governance and accountability of the public education system. An additional $628 million for fiscal 1990-91 was appropriated to fund public education and to alleviate a budget shortfall in state social-services agencies. The Legislature also approved state revenue increases and budget transfers to pay for the additional spending and enacted various other legislation.

This special legislative report summarizes the legislation enacted during the four called sessions of 1990. It also includes an update on the July hearings before state Dist. Judge Scott McCown of Austin on whether the school-finance provisions of SB 1 meet the Supreme Court's Edgewood requirements for an equitable system.

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INTRODUCTION

On Oct. 2, 1989 the Texas Supreme Court found the Texas school-finance system unconstitutional. The ruling, in Edgewood v. Kirby (777 S.W.2nd 391), upheld a lower court injunction requiring that a new school-finance system be in place by Sept. 1, 1990 or else state spending under the old system would be barred.

After four special sessions the Legislature approved, and on June 6 the governor signed, SB 1 by Parker et al. which revises the school-finance system, changes the structure of state education administration, adds several education-accountability measures and makes other changes in laws governing public schools in Texas.

This report summarizes the provisions of SB 1. It also reviews the $528 million appropriated for fiscal 1990-91 to finance public education and the $100 million to cover social-service-agency budget shortfalls, along with the revenue measures enacted to finance the additional spending.

The plaintiffs in the Edgewood case have questioned whether the school-finance revisions in SB 1 meet the objections raised by the Supreme Court when it invalidated the state's school-finance system last October. Dist. Judge F. Scott McCown of Austin, who is reviewing compliance with the Edgewood ruling, has indicated that he is likely to accept the school-finance changes made by SB 1 for use in the 1990-91 school year, with the provisions affecting subsequent years subject to closer constitutional scrutiny, ultimately by the Supreme Court. A section of this report summarizes the arguments presented before Judge McCown during court proceedings on July 9-24 and examines the prospects for further judicial action.

During the four special sessions of 1990, the Legislature also enacted other new laws covering a broad range of subjects. Those new laws are briefly summarized.

SB 1 -- SCHOOL FINANCE REVISIONS

SB 1 by Parker et al. (Glossbrenner) revises the state school-finance system, starting with the 1990-91 school year, to distribute a larger proportion of state aid to school districts with lower wealth and higher tax rates. It retained, at higher state-funding levels and with various modifications, the basic "two-tier" structure of the Foundation School Program that distributes state aid based on a district's wealth, tax rate, size and type of student. It is estimated that for the 1994-95 school year, the new system will require from $1.2 billion to $2.4 billion in additional state funding beyond the $5.0 billion originally appropriated for the 1990-91 school year.

The bill retains the basic school-finance structure of 1,052 school districts raising local revenue by taxing the property wealth within their individual boundaries, with state funding used to compensate for the differences in district wealth. It does not cap, nor does it redistribute to less wealthy districts, the additional local revenue per student that districts may raise beyond the level matched by state aid.

SB 1 provides that the state school-finance system must meet a standard of fiscal neutrality that allows 95 percent of all students (excluding the 5 percent living in the wealthiest districts) to have substantially equal access to similar state and local revenue per student, regardless of the wealth of their school districts, if their districts make a similar tax effort. State officials will have broader discretion in future years to set the funding elements to meet that standard. Various new studies will establish an empirical framework for deciding what amount of state aid will provide an adequate education for all students.

The bill links more closely the level of state aid and the tax effort made by local districts. Its complex funding formulas are intended to reward with higher levels of state aid those districts levying higher taxes on a low-wealth tax base. Eventually the level of school aid guaranteed for each student will be tied to the revenue per student in the wealthier districts -- as state and local revenue increases in the wealthier districts, so will the revenue per student for the less-wealthy districts.

The gains and losses to the districts resulting from the new school-finance formulas in SB 1 will be phased in during a transition period of four years. Also, a "hold-harmless" provision will ensure that in 1990-91 no district will receive less state aid than it would have been entitled to receive under prior law.

Appropriations for 1990-91

Although SB 1 authorized additional spending for public education, no state money can be spent unless it is appropriated. SB 11 by Brooks and Caperton (sixth called session) appropriated an additional $528 million for public education in fiscal 1990-91. Added to the prior appropriation the Foundation School Program, basic state spending for the public schools will total $5.5 billion during the 1990-91 school year.

More than $456.6 million of the appropriation is to be distributed as part of the state share of the Foundation School Program. The remaining $61.3 million is earmarked for a "hold-harmless" provision meant to ensure that no school district will receive less state aid for the 1990-91 school year than it would have under the previous school-finance law. The "hold-harmless" appropriation will benefit primarily high-wealth, low-tax districts that otherwise would lose state aid under the new funding formulas. However, under SB 1 the "hold-harmless" appropriation will not prevent the loss of state aid to a district resulting from the change in how average daily attendance is calculated (see page 8).

Another $5 million of the new appropriation will fund a statewide inventory of school facilities in fiscal 1990, and $5 million more will be deposited in the new Public Education Development Fund for disbursement to individual schools with approved innovative programs (see page 49). An additional $80,000 is to fund management and leadership training programs for education administrators.

(For a summary of the revenue and appropriation measures enacted during the 1990 special sessions, see page 26.)

Proration of State Aid Shortfall

The $5.5-billion appropriation for the 1990-91 school year, including the $528 million added by SB 11, is considered unlikely to fully fund the state share of the basic school funding mechanism -- the Foundation School Program (FSP) -- under the new funding formulas of SB 1. Although the statutory formulas in SB 1 provide for certain levels of state funding for public education, only the amount actually appropriated can can be spent.

SB 1 did not change Education Code, sec. 16.254(d), which provides that each district's allocation of state aid is to be reduced if the amount appropriated fails to match the funding levels set by the statutory formulas. Any shortfall is to be prorated -- apportioned among the various districts under formulas adopted by the State Board of Education.

A prorated reduction in state aid is not apportioned equally among the districts. The current proration formula requires a smaller reduction in state aid to districts with low property wealth and high tax effort. As a result, state aid proration actually tends to increase the equity of the school finance system because the low-wealth, higher-taxing districts receive a smaller cut in their state aid.

Proration is considered likely in the coming school year. The amount appropriated for 1990-91 will fully fund the state share of the FSP only if no district qualifying for state aid raises its 1990-91 tax rate. Yet under SB 1, the districts have an incentive to raise their 1990-91 tax rates because the higher their rates (up to a maximum level), the more matching state aid they will receive. Commissioner of Education William Kirby has estimated that local-district tax response will create a shortfall of at least $60 million from the amount appropriated for 1990-91 and the amount to which districts are entitled under the SB 1 school-finance formulas.

Another factor likely to cause proration in the coming year is that final property values determined by the State Property Tax Board are lower than was predicted when the Legislature was setting funding formulas. Lower than expected property values mean that a higher effective property-tax rate would be necessary to generate only the same amount of revenue. The change in property values alone is expected to create a shortfall of some $15 million, which will have to be prorated.

A change in how average attendance is calculated also will affect state education funding. Many districts anticipate that extending the period for counting student attendance will reduce their average student count. Since state aid is based on the number of students in average daily attendance, any change will affect the level of state funding.

The "hold-harmless" provision, which provides that no school district will receive less state aid for the 1990-91 school year than it would have received under previous law, also is subject to proration if the $61.3 million that was appropriated for that provision is insufficient to cover its cost. If the "hold harmless" appropriation is insufficient to maintain state aid at previous levels, the commissioner of education is to reduce each district's share "proportionately."

State Aid Pegged to Local Taxes

The amount of state aid a local school district receives depends partly on its local tax effort. For instance, to obtain the maximum state aid in 1990-91, a district must levy a total effective tax rate of at least 91 cents per $100 valuation. Approximately 620 of the 1,052 districts, serving about 60 percent of the state's students, already tax above the 91-cent level. (Districts also may levy taxes to raise revenue that is not matched by state aid in order to "enrich" their programs.)

Most districts impose two property taxes -- one for maintenance and operations (M&O) and one for debt service on district bonds. M&O tax rates are capped at $1.50, while the caps on debt-service rates float according to a district's property valuations. However, the distinction between M&O and debt service rates has become less important in calculating aid because under SB 1, the rates for both are to be counted in determining state aid.

In school funding calculations, all tax rates are expressed as "effective" rates, meaning they have been calculated to eliminate local differences such as the number of tax exemptions and varying assessment practices. A district's "effective" tax rate generally is lower than its actual rate -- the rate that appears on taxpayer bills. The average effective tax rate during the 1989-90 school year was 98.6 cents, with 83 cents earmarked for maintenance and operations and 15 cents for debt service. The average nominal tax rate was $1.01.

Overview of SB 1

The new school-finance formulas in SB 1 tend to shift state aid away from the state's high-wealth, low-taxing districts to districts whose property wealth generates proportionately less in local tax revenue despite their relatively high tax rates. The formulas also create an incentive for districts with below-average tax efforts to increase their rates if they wish to maintain in future years the same level of state aid that they would have received prior to enactment of SB 1 or if they wish to receive more state aid.

No district will be required to increase its tax rate to $1.18 per $100 valuation, the level that ultimately will yield the maximum amount of state aid. But more districts will have the option of spending a greater amount per student if they choose to tax at a higher rate.

The school-finance system under SB 1 continues the general features of the "two tier" system:

-- State and local funds are combined to finance the Foundation School Program, with the relative state and local shares determined by formula.

-- All but a few dozen "budget-balanced" districts with extremely high property wealth per student receive state funds under the FSP's basic funding mechanism, known as the "first tier."

-- Districts with relatively low property-wealth per student receive a "second tier" of funding in which the state makes up for low revenue yields from local taxes. This funding is delivered by the state's guaranteed-yield program, adopted by the Legislature in 1989. (The Equity Center, a research group financed by low-wealth districts, estimates that in 1990-91 about 800 of the state's 1,052 districts, serving around 67 percent of the state's students, will be eligible for "second-tier" aid under the guaranteed yield program.)

Funding variations continue

Variations in per-pupil spending among the state's 1,052 school districts are expected to continue under the new formulas, regardless of local tax response. For instance, the Texas Education Agency estimates that for the 1990-91 school year, the lowest-wealth districts (those containing the 5 percent of the student population backed by the lowest property wealth per student) will have per-pupil state and local revenue of $3,463 at current tax rates (up $256 from the previous year) and of $3,838 if all raise their tax rates to the rate that will generate the maximum level of state aid. The top districts in terms of per pupil wealth will have per-pupil state and local revenue of $4,987 at current local tax rates.

Estimates of statewide average revenue per pupil in 1990-91 under SB 1 range from $3,811 (up $174 from 1989-90) to $3,882, depending on local tax response. (The national average revenue per pupil was approximately $4,500 in 1988-89.)

Increase in authorized state aid

The estimated five-year increase in state aid made by SB 1 under the Foundation School Program would total at least $4 billion over the level required by current law, if the Legislature appropriates the full amount indicated by the FSP formulas. If all school districts raise their local tax rates to receive the maximum level of state aid, the total would rise to $6.2 billion.

Four-year transition for state aid changes

The gain or loss in a district's state aid per student because of SB 1, compared to what it would have received in the 1990-91 school year under previous law, will be phased in over four years. For the 1991-92 school year, the change in state aid will be limited to 25 percent of what the new formulas otherwise would require. For 1992-93, the change will be limited to 50 percent. For 1993-94, the change will be limited to 75 percent. In the 1994-95 school year, the phase-in will be complete, and each district is to receive the full amount of the state aid specified in the new formulas.

The Foundation School Program -- First Tier

Most state support for public education is provided through the two tiers of the Foundation School Program (FSP), which were retained, with modifications, in SB 1. A district's FSP aid from the state depends on the district's wealth, tax rate, size and type of students. Revenue from local district property taxes funds part of the FSP.

Basic allotment

The first tier of the FSP is intended to guarantee each district enough money per student to provide a basic education program. The amount distributed to each school district is determined by statutory formulas that start with a basic allotment per pupil.

The basic allotment is adjusted by a "price differential index" (PDI) to reflect geographic variations in costs. The basic allotment also may be revised by a small-district or sparse-area adjustment, if applicable.

The adjusted basic allotment is multiplied by the number of a district's students in average daily attendance (ADA) to determine the amount of the district's basic entitlement. The state share of the basic entitlement is distributed to school districts as a block grant to cover operating costs.

1990-91. The basic allotment was $1,477 in 1989-90 and had been scheduled to rise to $1,500 for the 1990-91 school year. Instead, SB 1 raised the basic allotment to $1,910.

1991-92 and 1992-93. SB 1 will increase the basic allotment to $2,128 for both the 1991-92 and 1992-93 school years.

1993-94 and 1994-95. In the 1993-94 and 1994-95 school years, the basic allotment either will remain at $2,128 or will be an amount adopted by the Foundation School Fund Budget Committee (FSFBC),

composed of the governor, the lieutenant governor and the comptroller. The FSFBC would calculate the amount of the basic allotment to represent the cost per student of a regular education program that meets accreditation and other state requirements, as determined by state studies.

Average daily attendance

Average daily attendance (ADA), which is multiplied times the adjusted basic allotment to determine the amount of each district's "first tier" entitlement, now will be calculated based on daily student attendance as averaged for each month of the school year. Under prior law, ADA was determined by the best four of eight state-selected weeks -- the four weeks beginning the first Monday in October, and the four weeks beginning the third Monday in February.

The change in calculating ADA made by SB 1 is intended to encourage districts to keep students in class year-round. However, the change has been questioned by those who fear it will decrease funding to urban districts that have higher drop-out rates and districts serving children of seasonal farmworkers. The Legislative Education Board (LEB) and the Legislative Budget Board (LBB) must complete, by Jan. 1, 1991, a study of the impact of year-round ADA.

As a transitional measure, for the 1990-91 school year only, a district's ADA count may not be less than 98 percent of its ADA as previously defined.

A school district that loses more than 2 percent of its ADA because of a military-base closing or personnel-reduction will be funded according to its ADA for the preceding school year.

Cost-of-education index

Starting in 1991-92, a cost-of-education (COE) index, to adjust the basic allotment for geographic variations in resource costs, will replace the PDI and small-district adjustments, which have been criticized as unfairly favoring large urban districts and inefficient rural districts. The LEB and the LBB are to complete, by Jan. 1, 1991, a study of the cost-of-education index to determine if it reflects the geographic variation in costs due to factors beyond the control of school districts.

Weighted pupil allotments

Districts receive extra money for students in vocational education, special education and programs for the gifted and talented and for compensatory and bilingual programs. The extra amount is

calculated using "weights" to adjust the amount per student of the basic allotment. For example, if a district has students in bilingual education courses, the basic allotment for each of those students in average daily attendance is multiplied by a weight of 0.1, and the extra "weight" is added to the basic allotment amount for those students.

Under SB 1, additional money that districts receive from the "weight" for compensatory education, which applies to children in the school-lunch program, must be used solely for supplementary programs and services directed at those students. Previously, districts could use compensatory funds to help fund regular education programs if those programs served at least some students in compensatory programs.

1990-91 -- vocational education changes. Starting in 1990-91, the weights providing extra funding for students in vocational education programs are limited to students in grades nine through 12 (except for certain programs for handicapped students). Extra funding for vocational-education programs in grades seven and eight was eliminated.

The weight for students in vocational education programs has been reduced from the current 1.45 to 1.37. The decrease in the vocational education weight is meant to partially offset the increase in the basic allotment.

The commissioner of education is to conduct a cost-benefit comparison between vocational education programs and math and science programs.

1991-92 -- pregnant students. The weight for educating pregnant students in remedial and support programs will be increased from 2.0 to 2.41, effective Sept. 1, 1991, for the 1991-92 school year.

1992-93 -- program-cost differentials. Program-cost differentials, designed to reflect more accurately than the current weights the added expenses of high-cost courses or programs, will be developed jointly by the LEB and the LBB and submitted to the FSFBC for adoption beginning with the 1992-93 school year. Special consideration will be given to the costs associated with class size, laboratory expenses, materials, equipment, teacher training, salary supplementation and special services.

The new differentials are intended to replace the weights currently assigned to vocational education, special education, programs for the gifted and talented and for compensatory and bilingual education. The differentials also are to cover areas not

currently accorded weights, such as chemistry courses that require expensive laboratory equipment.

Funding for special programs will be expressed both as a multiplier of the basic allotment and as a specific dollar amount per student. The dollar amounts are intended to show more explicitly the actual additional cost involved. If the FSFBC does not adopt by April 1 the program-cost differentials for the following school year, the commissioner of education is to do so.

Local fund assignment and minimum local tax rate

The total cost of the first tier of the Foundation School Program is determined by multiplying the number of students in average daily attendance, taking into account the various weights for special programs (Weighted Average Daily Attendance or WADA), by the amount of the adjusted basic allotment per student. The local fund assignment is the share of the total statewide cost of the Foundation School Program that is to be paid by the school districts. The local fund assignment has been expressed as a percentage of the total statewide cost of the FSP. For example, the local fund assignment for the 1989-90 school year was 33.3 percent.

The minimum property-tax rate that local districts must levy in order to receive state aid under the first tier of the FSP is calculated based on the local fund assignment. The minimum tax rate is the rate that, if levied in every district in the state, would raise enough total revenue statewide to cover the proportion of the statewide cost of the FSP assigned to the local districts. For example, in 1989-90 a tax rate of 34 cents per $100, levied by all of the school districts, raised enough total revenue statewide to equal the local fund assignment of 33.3 percent of the total statewide cost of the first tier of the FSP.

Increasing the percentage of the local fund assignment also increases the minimum local tax rate, which tends to increase the equity of the school-finance system. Wealthy districts, which can raise more local revenue per penny from any increase in the minimum tax rate, will contribute a relatively larger local share of first tier of the FSP than will property-poor districts, which can raise less per penny. As a result, a proportionately larger share of "first tier" state aid will flow to the property-poor districts.

1990-91. Under SB 1, the local fund assignment, 33.3 percent in 1989-90, is raised to 41 percent for the 1990-91 school year.

The 1989-90 minimum tax rate required to receive state aid was

34 cents per $100 of property value. For the 1990-91 school year, the minimum rate will be 54 cents per $100.

1991-92 and 1992-93. For the 1991-92 and subsequent school years, the local fund assignment and the minimum tax rate will be determined differently. Rather than a specified percentage of the total amount of the FSP first tier, the local fund assignment will be expressed as the amount that would be raised by a hypothetical statewide tax rate of 70 cents per $100 of property value. However, the minimum tax rate required for a district to receive FSP first-tier aid will not be increased to 70 cents immediately but will be phased in, starting at 54 cents per $100 for the 1991-92 and 1992-93 school years.

1993-94 and 1994-95. The local fund assignment will be calculated based on the amount raised by a hypothetical statewide tax rate of 70 cents per $100 of property value (the 1992-93 level) or, for the 1993-94 and 1994-95 school years only, a rate adopted by the FSFBC.

The minimum tax effort required for a district to receive Foundation School Program aid in 1993-94 will be 62 cents per $100 of property value. In 1994-95, the minimum tax rate will be 70 cents per $100 of property value, completing the phase-in of the minimum-rate increase.

Second Tier of the FSP -- the Guaranteed Yield Program

The state offers districts with relatively low property wealth a second tier of aid under the Foundation School Program: equalization funding distributed through the Guaranteed Yield Program. The program guarantees that each one cent of a district's tax rate, beyond the minimum rate required to meet the local fund assignment, will yield a specified amount per weighted student.

The guaranteed yield applies only up to a specified maximum tax rate. (Districts may raise their tax rate higher than the maximum guaranteed-yield rate, but the state does not guarantee the yield on this "third tier" of funding.)

The portion of a district's tax rate above the local-fund-assignment tax rate (on which first-tier funding is calculated) is called the district enrichment tax rate (DTR). If the district's wealth per student yields less per penny than the guaranteed per-pupil yield per one cent of tax effort, the state makes up the difference. For example, in 1989-90 the guaranteed yield per one cent of tax was $18.25 per weighted student. If one cent of a district's tax rate generated only $10 per weighted student, the state

provided $8.25. (If a district had property wealth sufficient to raise $18.25 or more per student per one cent of tax, it received no matching money from the state.)

Guaranteed yield

1990-91. The guaranteed yield for each cent of a district's tax rate above the minimum local-fund-assignment rate was reduced from $18.25 per weighted student for 1989-90 to $17.90 for 1990-91.

1991-92 and 1992-93. The guaranteed yield for each one cent of tax rate above the minimum rate required for a district's local fund assignment will increase from $17.90 per weighted student for 1990-91 to $26.05 for 1991-92 and 1992-93.

Also, for 1991-92 and 1992-93 the LEB and FSFBC will have the option of calculating an alternative amount for the guaranteed per-pupil yield per one cent of tax rate. The alternative amount will be based on the yield of any district that falls at the 90th percentile or above in a rank-ordering of districts and student population by property wealth per weighted student (see page 16 for an explanation of district percentiles).

1993-94 and 1994-95. The guaranteed yield for each cent of tax rate above the minimum local-fund-assignment rate will be either $26.05 per weighted student or, starting in 1993-94, an amount adopted by the FSFBC.

Weights in second-tier calculations

The weighted-student count used in calculating the guaranteed-yield allotment under previous law had included the full weights for vocational education, special education, programs for the gifted and talented and for compensatory and bilingual education and half the adjustments for the PDI and small districts. Starting in 1990-91, SB 1 changed the method of calculating the number of weighted students for the guaranteed-yield program to include the full small-district adjustment but still uses only half the PDI.

Beginning in 1992-93, if the new cost-of-education index and program-cost differentials are not adopted by the FSFBC or the commissioner of education, guaranteed-yield program funding will be calculated according to daily attendance counts that are not adjusted by weights to account for special program needs. The possibility of reducing some districts' attendance counts by eliminating weights from the second-tier calculation is intended to encourage the FSFBC or the commissioner of education to adopt a COE index and program-cost differentials.

District enrichment tax rate

1990-91. The district enrichment tax rate (DTR) is that portion of a district's tax rate, beyond the minimum local-fund-assignment rate required to receive first-tier state aid, for which the yield per penny per weighted student is guaranteed by the state. The maximum DTR for which the state will guarantee the yield was increased from 36 cents per $100 of property valuation for 1989-90 to 37 cents per $100 for the 1990-91 school year.

1991-92 and 1992-93. The maximum district enrichment tax rate for guaranteed yield will be increased from 37 cents per $100 valuation in the 1990-91 school year to 48 cents per $100 starting in 1991-92.

As with the guaranteed yield per penny, the LEB and the FSFBC will have the option, beginning with the 1991-92 school year, of calculating a different maximum DTR using that of any district at the 90th or greater percentile of wealth per student as their standard.

1993-94 and 1994-95. Starting in 1993-94, the maximum district enrichment tax rate will be either 48 cents per $100 or a different maximum DTR adopted by the FSFBC.

Guaranteed yield limits and phase-in

1990-91. As interpreted by the LEB, SB 1 provides that, for districts with a tax rate of less than $1.18 cents per $100 valuation for the 1990-91 school year, the maximum district enrichment tax rate (DTR) will be limited for school years 1991-92, 1992-93 and 1993-94. Even though for 1990-91 a local-fund-assignment tax rate of 54 cents per $100 and a maximum DTR of 37 cents (a combined rate of 91 cents) will provide a district the maximum amount of state aid for that year, under the transitional provision the district will receive less than the maximum guaranteed yield during the following three years. Only districts with a tax rate in 1990-91 of $1.18 -- the rate necessary to generate maximum state aid in 1994-95 -- will avoid the phase-in limitation.

1991-92. For 1991-92, the maximum DTR for which a district may receive guaranteed yield will be the district's 1990-91 DTR (which, according to the LEB, is to be calculated as if the local-fund-assignment tax rate were the 70 cents per $100 required in 1994-95), plus 25 percent of the difference between the maximum DTR covered by the guaranteed yield in 1994-95 (48 cents per $100 valuation or a different rate set by the FSFBC) and the district's 1990-91 DTR.

1992-93 and 1993-94. The phase-in will continue in 1992-93, when a district's maximum DTR will be its 1990-91 DTR, plus 50 percent of the difference between the 1994-95 maximum DTR and the district's 1990-91 DTR. For 1993-94, a district's maximum DTR will be its 1990-91 DTR, plus 75 percent of the difference.

1994-95. By 1994-95 the phase-in will be complete, and a district's maximum enrichment tax rate will be either 48 cents or a different rate adopted by the FSFBC.

Maximum Guaranteed State and Local Revenue

Starting in 1993-94, the per-student state and local revenue guaranteed under the Foundation School Program will be limited to the accountable costs of exemplary programs, as determined by state studies. The cost of facilities and equipment will be included in accountable costs until a funding formula for capital outlay and debt service is adopted.

This "maximum guaranteed level of qualified state and local funds per student" (in effect, the maximum state and local Foundation School Program revenue guaranteed per student) is, for 1993-94 and 1994-95 only, to be set at between 95 percent and 100 percent of the amount of state and local revenue per pupil of the district at the 95th percentile of state and local revenue per pupil (see page 17).

Special Studies to be Completed

Various studies required by SB 1 will be used to determine funding formulas in future years. SB 1 requires the LEB and the LBB to complete, by Jan. 1, 1991, studies of the additional accountable costs of high-cost courses or programs (with the costs expressed as weights and as dollar amounts), a cost-of-education index designed to reflect the geographic variation in costs due to factors beyond the control of school districts, and capital outlay and debt service requirements.

The LEB and LBB also must, by Jan. 1, 1991, complete specific studies on the impact of year-round average daily attendance (ADA), mechanisms for funding vocational education and the cost of serving students considered to be at risk of dropping out of school.

Setting Funding Elements

LEB calculation

Six funding elements used in calculating state aid will be calculated each year by the LEB, starting with the 1993-94 school year. The LEB will adopt rules for calculating the elements.

The six funding elements include: (1) the basic allotment; (2) the cost-of-education index designed to reflect uncontrollable geographic cost variations; (3) appropriate program-cost differentials, with program funding levels expressed both as dollar amounts and as weights used to adjust the basic allotment; (4) the maximum guaranteed level of state and local revenue -- a level representing the costs of exemplary programs, as determined by studies and the 95th percentile limitation, including the cost of facilities and equipment until a funding formula covering capital outlay and debt service is adopted; (5) the total tax rates covering the local fund assignment and the guaranteed-yield program; and (6) elements of the funding formulas for capital outlay and debt service.

FSFBC adoption

The Foundation School Fund Budget Committee (FSFBC) will consider the LEB report and, after notice and public comment, adopt the six funding elements by Nov. 1 before each regular session of the Legislature, starting before the 1993 session.

Fiscal neutrality and school-finance principles

The funding elements are to promote fiscal neutrality, providing that similar tax effort by school districts, regardless of the level of their property wealth, will produce substantially equal access to similar revenue per student.

Finance principles. SB 1 also requires that the school-finance system adhere to these principles:

--At least 95 percent of the state's students are to live in districts where the yield of state and local educational-program revenue per pupil per one-cent of effective tax effort is not statistically significantly related to their district's taxable wealth per student;

--State and local revenue for which equalization is established will include funds necessary to efficiently operate and administer appropriate educational programs and provide adequate facilities and equipment.

Impact on future legislatures. SB 1 specifies that future legislatures remain free to use other methods to achieve substantially equal access to similar revenues per student at similar tax effort, although adherence to the school-finance principles added by SB 1 must be maintained. Among other equalization methods listed in SB 1 that future legislatures might use are minimum tax efforts and redefining the tax base.

Funding elements in appropriations bill

Starting by 1994-95, the general appropriations bill will include the funding elements adopted by the FSFBC. The program-cost differentials will be reported in dollar amounts per student.

Use of Percentile Rankings in the Funding Elements

Percentile rankings of school districts are to be used in calculating the amount of the guaranteed yield per student per one cent of tax effort, starting as early as 1991-92, and in fixing the maximum guaranteed level of state-local funding per student in 1993-94 and 1994-95.

The use of percentile rankings is intended to make the new school-finance system self-adjusting by linking the guaranteed yield and maximum guaranteed funding-level to the actual yield and spending level of districts at a certain high level of wealth or revenue. This "floating" standard is meant to assure less wealthy districts that the state will offer them the opportunity to receive the same level of revenue that the wealthier districts choose for themselves.

Amount of guaranteed yield per cent per student

In calculating the amount of the guaranteed yield per one cent of tax per student (see page 12), the LEB and the FSFBC may use the yield of the district that falls at the 90th percentile in a rank ordering of districts by property wealth per weighted student.

As the districts are listed in rank order, starting with the poorest and working up through progressively wealthier districts, each district's weighted student attendance count (WADA) is added to that of the districts below it. The point at which 90 percent of all students statewide are included in the cumulative total is the 90th percentile mark. The district in which the 90th percentile-mark student is found is the 90th percentile district.

Under SB 1, the amount of the yield per one cent of tax rate per weighted student of the 90th percentile district may become the guaranteed yield per one cent for the entire state.

In the example shown below, using figures compiled by the Equity Center based on 1989 taxable values and projections of weighted average daily attendance for 1990-91, the Dallas ISD was the district at the 90th percentile of wealth per weighted student. The Dallas district has $286,176 in wealth per weighted student. The guaranteed yield per penny is $28.62 per weighted student: wealth of $286,176 divided by a $100 valuation yields $2,862; resulting in a per-penny yield of $28.62.

WEALTH PERCENTILES: 1989 TAXABLE VALUES PER 1990-91 WADA

District Name	Wealth Per WADA	1990-91 WADA	Cumulative WADA	Cumulative WADA
Sunray ISD	272,618	706	3,555,255	89.67
Sonora ISD	279,941	1,437	3,556,692	89.71
Culberson County ISD	281,239	1,208	3,557,900	89.74
Dallas ISD	**286,176**	**158,943**	**3,716,843**	**93.75**
Rockdale ISD	286,314	2,289	3,719,132	93.81
Terrell County ISD	287,815	549	3,719,681	93.82
Sheldon ISD	290,029	4,767	3,724,449	93.94

Maximum funding per student

A rank ordering of districts by their state and local revenue per student will be used to determine the "maximum guaranteed level of qualified state and local funds per student" under the Foundation School Program in 1993-94 and 1994-95 (see page 14). Districts will be ranked on the basis of their previous year's state and local revenue per student, starting with the district that received the least amount per weighted student in average daily attendance, and working up. Each district's student population will be added to that of the districts ranked below it, giving a cumulative total.

The per-student revenue of the 95th percentile district -- the district containing the student who brings the cumulative total of students to 95 percent of the total number of students statewide -- will be the basis for calculating the maximum guaranteed level of funds per student for all districts in the state.

In the example shown below, using figures compiled by the Equity Center based on 1989 taxable values and projections of weighted average daily attendance for 1990-91, the Richardson ISD was the district at the 95th percentile, with $3,612 in state and local revenue per student. Once the amount is established, the the maximum guaranteed level may be set as low as 95 percent of the amount, or $3,431 (0.95 X $3,612), or as high as 100 percent of the amount, or $3,612.

REVENUE PERCENTILES: 1989-90 STATE & LOCAL TOTAL REVENUE PER 1990-91 WADA

District Name	Revenue Per WADA	1990-91 WADA	Cumulative WADA	Cumulative % WADA
White Oak ISD	3,576	1,556	3,759,365	94.82
Argyle ISD	3,581	680	3,760,045	94.84
Megargel ISD	3,606	133	3,760,178	94.84
Richardson ISD	**3,612**	**36,058**	**3,796,235**	**95.75**
San Isidro ISD	3,622	553	3,796,788	95.77
Three Way ISD (Erath)	3,624	44	3,796,832	95.77
Kendleton ISD	3,628	222	3,797,054	95.77

Other Finance-System Changes

Prekindgarten for three-year-olds

Starting in the 1991-92 school year, children who speak little English or come from low-income families may be enrolled in prekindergarten at age three, rather than four, and will be included in attendance counts for calculating state aid, if the districts apply for the program.

School facilities loans and grants

Broader eligibility for facilities loans -- SB 3. SB 3 by Haley (sixth called session) broadens the definition of school-district capital assets that may be funded under the Public School Facilities Funding Act, approved during the 1989 regular session. The 1989 act authorized the Bond Review Board to use $750 million in state revenue bonds to provide loans to school districts to develop facilities or to refinance local bonds. SB 3 permits the board to provide loans covering additional costs of typical school-bond issues, including

land acquisition and installation of equipment and furnishings, rather than only the costs of existing buildings and permanent fixtures.

Emergency school-facility grants. For the 1991-92 school year only, the Bond Review Board may make emergency grants to school districts for capital assets and instructional facilities and to pay debt service, if the Legislature appropriates funds for that purpose. Preference will be given to districts with inadequate property wealth to meet program and debt-service demands.

Technology Fund

Effective Sept. 1, 1992, a Technology Fund will be created from which districts will receive $30 per student for the 1992-93 school year, if the program is fully funded, with expenses to be shared by the state and local districts in the same proportions as the FSP. The allotment may be used to acquire technological equipment and services and to research and develop emerging instructional technology, with at least 75 percent of the money in each district to be used for classroom instructional services and programs.

Equalized education impact statement

The Legislature Budget Board is to prepare an "equalized education impact statement" for each legislative bill affecting public education. The statement is to evaluate the effect of the bill on state equalized funding requirements and policy.

FEATURES OF FIVE-YEAR SCHOOL FINANCE PLAN COMPARED WITH 1989-90 SCHOOL YEAR

	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95
Basic Allotment	$1,477	$1,910	$2,128	$2,128	$2,128 (or as set by FSFBC)	$2,128
Local Fund Assignment	33%	41%	Amount generated by $0.70 tax rate	Amount generated by $0.70 tax rate	Amount generated by $0.70 tax rate (or as set by FSFBC)	Amount generated by $0.70 tax rate
Minimum Tax Rate for FSP Aid	$0.34	$0.54	$0.54	$0.54	$0.62	$0.70
Maximum Enrichment Tax Rate	$0.36	$0.37	$0.48*	$0.48*	$0.48* (or as set by FSFBC)	$0.48*
Tax Rate For Maximum State Aid	$0.70	$0.91	Depends on Rate in 1990-91	Depends on Rate in 1990-91	Depends on Rate in 1990-91	$1.18 (or FSFBC)
Guaranteed Yield on $0.01 Tax Rate	$18.25	$17.90	$26.05*	$26.05*	$26.05* (or as set by FSFBC)	$26.05
Phase-in of Aid Changes	none	none	25%	50%	75%	100%
Maximum Revenue Calculated by Percentile?	no	no	no	no	yes	yes

* or calculated using at least 90th percentile of wealth

House Research Organization

COURT HEARING ON CONSTITUTIONALITY OF SB 1

In July Dist. Judge F. Scott McCown of Austin heard 12 days of arguments on the constitutionality of SB 1. He said at the conclusion of the Austin court hearing on July 24 that he planned to issue an opinion by October. The judge said it was unlikely that he would order any change in the SB 1 school-finance plan for the 1990-91 school year.

During the hearing attorneys for the low-wealth school districts that are the plaintiffs and plaintiff-intervenors in the Edgewood v. Kirby lawsuit argued that SB 1 fails to meet the Supreme Court's mandates. The Attorney General's Office (representing Commissioner of Education William Kirby and other defendants) and attorneys for a group of high-wealth districts that have intervened in the case as defendants argued that SB 1 meets all constitutional requirements.

Supreme Court Opinion

The Texas Supreme Court on Oct. 2, 1989 unanimously held in Edgewood ISD et al. v. Kirby (777 S.W.2d 391) that the Texas school-finance system violated Art. 7, sec. 1 of the Texas Constitution, which requires the Legislature "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools" in order to provide "a general diffusion of knowledge."

The court ordered a revision of the system, but said, "We do not now instruct the Legislature as to the specifics of the legislation it should enact." However, the court warned:

> More money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. A band-aid will not suffice; the system itself must be changed.

The Supreme Court said an acceptable system would have to permit "a direct and close correlation between a district's tax effort and the educational resources available to it," in contrast to the current inability of property-poor districts to generate sufficient revenue to meet minimum standards even with high tax rates. Districts must have "substantially equal access to similar revenues per pupil at similar levels of tax effort," and children in all districts "must be afforded a substantially equal opportunity to have access to education funds."

The court said it would permit the state to "recognize differences in area costs or in costs associated with providing an equalized educational opportunity to atypical students or disadvantaged students." The court also would permit school districts to supplement the state-supported program, but "any local enrichment must derive solely from local tax effort."

Because the state's responsibility to support public education is constitutionally imposed, the court said, "equalizing educational opportunity cannot be relegated to an 'if funds are left over' basis."

Subsequent Judicial Action

State Dist. Judge Harley Clark, who in April 1987 had issued the original trial court ruling declaring the state school-finance system unconstitutional, had postponed the effect of his injunction against further distribution of state funds under the system, staying it until May 1, 1989 to allow the Legislature to establish a new system, which had to be "in place," although not fully implemented, by Sept. 1, 1989. The 1989 deadlines were not observed, however, because the 3rd Court of Appeals suspended them when it reversed Judge Clark's decision in December 1988. When the Supreme Court reversed the court of appeals and reinstated Judge Clark's injunction, it set a new deadline for legislative action of May 1, 1990.

On May 1, 1990 Judge McCown (who was assigned the case when Judge Clark resigned from the bench in December 1989) extended the Legislature's deadline until June 1. He announced that he would appoint a special master to draft a court-ordered plan to redistribute state public-education aid for the 1990-91 school year if the Legislature did not act. An initial draft plan would be submitted by the master on June 1. If the Legislature still had not acted by June 21, the master would file a final proposed plan on that date, and the judge would consider whether to impose it at a hearing on June 25.

After reviewing potential nominees submitted by parties to the lawsuit, Judge McCown appointed as special master former Supreme Court Justice William Kilgarlin, assisted by Dr. Billy D. Walker of the Texas Center for Educational Research and Dr. Jose A. Cardenas of the Intercultural Development Research Association. During the fifth called session in May, the Legislature enacted a school-finance plan that was vetoed by the governor. The Senate overrode the governor's veto, but the session was adjourned on May 30 after override supporters failed on May 29 to obtain the required two-thirds vote in the House.

Judge McCown convened a hearing on June 1 to consider various pending issues, and Special Master Kilgarlin submitted his draft

school-finance plan. Using the state revenues available, the Kilgarlin draft plan generally would have shifted substantial amounts of state aid from high-wealth, low-tax districts to low-wealth, high-tax districts. Also presented as an option, but not formally endorsed, was a cap on local revenue raised by local districts beyond that matched by the state.

During the fourth of its special sessions on public education, meeting June 4-7, the Legislature approved SB 1, revising the school-finance system, and increased the state school-aid appropriation for 1990-91 by $528 million. As a result, under Judge McCown's previous order further consideration of the special master's draft proposal was suspended, and the special master did not submit a final plan. The court's attention shifted to whether the new plan approved by the Legislature met the standards set by Supreme Court. Judge McCown indicated informally that he was inclined to allow the SB 1 plan to be used during the 1990-91 school year in order to avoid disruption, but he set hearings beginning July 9 to review the constitutionality of the new plan.

Plaintiffs' and Plaintiff-Intervenors' Arguments Against SB 1

Arguments raised

The plaintiffs, including Edgewood ISD and other low-wealth districts represented by lead attorney Albert H. Kauffman of the Mexican American Legal Defense and Educational Fund (MALDEF), argued that SB 1 failed to provide substantially equal access to funds for all the state's students, failed to create a priority allocation of state funds to education and failed to curb "unequalized enrichment" of educational funding by local districts. They asked the judge to enjoin implementation of SB 1 in September.

The plaintiff-intervenors, a group of 55 low-wealth districts represented by lead attorneys David R. Richards and Richard E. Gray, III of Austin, raised similar arguments against SB 1. They were willing to allow the bill to take effect for the 1990-91 school year only but sought an injunction against further implementation beginning with the 1991-92 school year.

The plaintiffs argued that, even assuming that the Legislature appropriated an amount sufficient to fully fund the formulas of the new school-finance system, SB 1 would provide "substantially equal access" to education funds for only 95 percent of students, not for all children, as required by the court. In reality, they argued, SB 1 is so vague that it could interpreted in such a way that less than 95 percent of the students would receive equitable treatment. It includes no enforceable mechanism to ensure that the policy goals

stated in the bill, which track the Supreme Court's opinion, would actually be met, they said.

The plaintiffs focused their challenge on the Legislature's decision to permit districts to continue to provide "unequalized enrichment," additional local revenue generated by tax rates greater than those matched by the state or by tax yields higher than the state-guaranteed yield. They also attacked SB 1 for failing to provide a priority allocation of funds to education, despite the Supreme Court's admonition against appropriating state funds for public education only on an "if funds are left over basis." Additionally they attacked the Legislature's alleged failure to address adequately an area of inequality specifically noted by the Supreme Court -- state assistance in financing school facilities.

The plaintiffs argued that certain provisions of SB 1 actually would increase inequality among rich and poor districts. As examples they cited the "hold-harmless" provision, which protects districts from a loss of state aid, and the change to all-year counts of student attendance, which may penalize districts with large migrant-labor populations or high dropout rates.

The plaintiffs concluded that SB 1 would not change the historical pattern in Texas of temporary equalization of education funding followed by a period in which districts with high property wealth increase spending past the level possible for poorer districts.

The plaintiff-intervenors presented similar arguments, characterizing the Legislature's plan as just putting more money into the old, inadequate system. They also argued that SB 1 would subsidize inefficiency by continuing the small-district allotment and the distribution of Available School Fund aid to wealthy districts and by allowing "budget-balanced" districts (those so wealthy that they receive no matching state aid) to tax at extremely low rates.

Remedies sought

The plaintiffs asked the judge to enjoin implementation of SB 1 for the 1990-91 school year and to impose the plan proposed earlier by the court-appointed master, although including in that plan the additional appropriations approved during the special session.

The plaintiffs also asked the judge to order a reorganization of the finance system along the lines of the Uribe-G. Luna plan (originally introduced as SB 9 and HB 34 during the third called session and reintroduced in succeeding sessions). This plan would include countywide collection of school taxes and a cap on local school "enrichment" taxes. The Legislature later could replace the

court-ordered plan with any other system that would reach the same high degree of equity, the plaintiffs said.

The plaintiff-intervenors did not request an injunction against implementation of the bill for the 1990-91 school year, but they did ask for an injunction against use of the new finance system in later years. They suggested that the judge appoint another master to explore alternatives to the current system while the Supreme Court considers the constitutionality of SB 1.

Defendants' and Defendant-Intervenors' Arguments Supporting SB 1

The defendants, represented by Assistant Atty. Gen. Kevin T. O'Hanlon, argued that the policy goals set by the Legislature in SB 1 that will govern future implementation of the bill follow the Supreme Court's requirements exactly, ensuring the constitutionality of the new school-finance system.

SB 1 is self-adjusting, the defendants said, avoiding any lag between the time when property-rich districts increase spending and when the state provides equalizing aid to poorer districts. They said if the new finance system in later years failed to live up to its promise of equity because of the way its provisions are interpreted, the plaintiffs would be free to return to court to challenge that failure. However, the judge should assume for now that state officials will carry out their duties properly in the future.

The Legislature did not attempt to guarantee absolute equity, said the defendants, since it would be prohibitively expensive for the state to guarantee all students equal access to the level of revenues available to the few students in the state's wealthiest districts. The Legislature decided to bring the bottom up rather than pull the top down and established self-adjusting mechanisms to ensure that low-wealth, high-tax districts remain at a higher funding level. This rational decision should not be overturned by the courts, argued the defendants. The Supreme Court stated that it would permit some unequalized enrichment, yet the need for such enrichment would be minimized by SB 1.

The defendants said giving public-education allocations a priority claim on the state budget would give school districts an independent claim on state funds, impermissibly bypassing the legislative appropriation process. They said the calculation of student attendance is not relevant to fiscal neutrality and that the all-year count instituted in SB 1 is justified as an inducement to encourage schools to keep students in class all year. They also argued that SB 1 made adequate provision for the funding of school facilities.

The defendants attacked the plaintiffs' suggested finance plan as poor public policy that had been considered and rejected by the Legislature. They said districts voluntarily may merge under current law but rarely choose to do so, and they urged the judge not to attempt to force unwanted consolidation. Creating a regional tax base would be an artifice to avoid the prohibition against a state property tax, said the defendants, and would violate earlier Supreme Court opinions prohibiting the transfer of local revenue to jurisdictions other than those in which the revenue was raised. They added that caps on expenditures only would equalize spending at low levels, removing the upward momentum created as high-spending districts raise educational standards.

The defendant-intervenors, a group of 49 districts represented by lead attorney Robert E. Luna of Dallas, similarly defended the new school-finance system in SB 1, arguing that it met the Supreme Court's requirement of fiscal neutrality in a politically feasible way, while allowing local enrichment and maintaining local control. Proposals by the plaintiffs such as consolidating tax bases and capping revenues only would diminish public support for public education, they said.

The Next Step

Judge McCown said he would issue a decision on SB 1's constitutionality by October. Under Texas court rules, any of the parties could appeal the decision directly to the Texas Supreme Court; since the court already has ruled the school-finance system unconstitutional, it now may review directly any remedies that would eliminate the legal deficiencies it identified earlier. Judge McCown's decision also could be appealed to the 3rd Court of Appeals in Austin if a finding of fact, rather than a question of constitutionality, is disputed.

The initial speculation was that the Supreme Court would be able to consider and rule upon any decision by Judge McCown before the Legislature convenes in regular session in January 1991. However, it now appears that any ruling on the constitutionality of SB 1 may not be made until spring of next year.

FINANCING PUBLIC EDUCATION AND SOCIAL SERVICES

Increased Revenue From Tax and Fee Hikes

Increases in state taxes and fees enacted by the Legislature during the sixth called session and signed by the governor on June 7 will raise an additional $526.1 million in general revenue during fiscal 1990-91.

Tax increases

HB 6 by Hury increased various state tax rates, effective July 1. For fiscal 1990-91, the higher tax rates will add an estimated $511.4 million in total additional revenue to the General Revenue Fund and about $902,000 to the State Highway Fund.

The bill increased the state sales-tax rate from 6 percent to 6.25 percent, which will add an estimated $303.4 million in general revenue in fiscal 1990-91.

The tax on cigarettes increased from 26 cents per pack to 41 cents per pack, which will add an an estimated $177.1 million in fiscal 1990-91. The tax on chewing tobacco, snuff and smoking tobacco increased from 28.125 percent to 35.213 percent of the factory list price, which in fiscal 1990-91 will add an estimated $5.2 million.

The tax on gross receipts from the sale of mixed drinks increased from 12 percent to 14 percent, which will add an estimated $25.7 million in fiscal 1990-91.

Fee increases

HB 4 by Grusendorf, effective Sept. 1, 1990, raises from $5 to $10 the fee for a duplicate driver's license or DPS certificate and for a change of address sticker or certificate. The increase will raise about $5.6 million in general revenue in fiscal 1991.

HB 5 by T. Smith, effective Sept. 1, 1990, increases by 50 percent the fees charged by the state for permits for use of public highways for moving portable buildings, manufactured housing, super-heavy trucks, hay bales and certain other bulky commodities, and farm equipment that exceeds statutory size and weight limits. The bill applies only to permit applications made after Aug. 31, 1990.

The fee-rate increases made by HB 5 will raise an additional $2.7 million in fiscal 1991. Revenue from the permit fees will be deposited in the General Revenue Fund rather than the State Highway Fund. As a result, in fiscal 1991 the State Highway Fund will lose an estimated $6.4 million (the revenue that would have been generated by the fees without the increase), and the General Revenue Fund will gain an estimated $9.1 million (the total revenue generated by the fees at their new higher rate).

Appropriation Revisions

SB 11 by Brooks and Caperton revised SB 222, the General Appropriations Act for fiscal 1990-91, to appropriate an additional $528 million from general revenue to public education and an additional $100 million from general revenue -- plus other amounts from other sources -- to social service agencies. It also transferred to public education $59.5 million from the budgets of various state agencies and approximately $42.4 million from the Economic Stabilization ("Rainy Day") Fund and made various budgetary transfers and reappropriations of unobligated balances.

Appropriation Reductions

SB 11 reduced appropriations from the General Revenue Fund for various agencies by $59.5 million in fiscal 1990-91.

Bond debt service -- $22.8 million

The $26 million appropriation for debt service on bonds issued by the Texas National Research Laboratory Commission (TNRLC) for the superconducting super collider (SSC) project was reduced by $11.2 million, to $14.8 million.

The $23.2 million appropriation to the Texas Public Finance Authority for bond debt service for projects of the Texas Department of Criminal Justice (TDCJ), Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Youth Commission (TYC) was reduced by $10.2 million, to $13 million.

The $2.9 million appropriation to the Texas Public Finance Authority for bond debt service for additional TDMHMR projects was reduced by $1.4 million, to $1.5 million.

A related bill, SB 12, prohibits the Texas Public Finance Authority from issuing bonds for TDMHMR, TDCJ and TYC projects if the bonds would require debt service greater than $13 million during fiscal 1990-91 and from issuing bonds for TDMHMR projects

that would require more than $1.5 million in debt service in those years. It also prohibits the TNRLC from issuing SSC bonds that would require debt service greater than $14.8 million during fiscal 1990-91. The lower bond-issue limits reflect the revised maximum amount that the affected agencies expect to issue during fiscal 1990-91.

Limiting by law the amount of certain bonds that may be issued allowed the Comptroller's Office to certify that the state is not obligated to pay any greater amount for debt service on those bonds during the current budget period.

Employees Retirement System (ERS) -- $11.7 million

The $307 million appropriation to ERS for state employees uniform group insurance premiums was reduced by $11.7 million, to $295 million.

Recently completed contract negotiations resulted in a lower-than-expected increase in premiums for state employee group insurance, and the lower appropriation reflects the resulting savings in the state contribution. Employee costs and benefits will not be affected.

Prisons -- $9.7 million

The $27 million appropriation to the TDCJ for operation of new prison units was reduced by $9.7 million, to $17.3 million. Some of the prison units failed to open when planned due to construction delays, so prison operation costs will be lower than earlier projected.

Governor's Office -- $1 million

The $15.6 million appropriated to the Office of the Governor from the General Revenue Fund was reduced by $1 million, to $14.6 million. The reduction was from unexpended balances.

Senate -- $500,000; House -- $1 million

The Senate's planned carryover of its unexpended balance from the budget period ending Aug. 31, 1989 was reduced by $500,000. The carryover for the House was reduced by $1 million.

Legislative agencies -- $1.6 million

The Legislative Budget Board's unexpended balance from the 70th Legislature was reduced by $500,000; the Sunset Advisory

Commission's by $100,000; the Legislative Council's by $500,000; and the State Auditor's by $500,000. The reductions reduced the amount of unexpended funds carried over to the new budget period.

Comptroller's Uniform Statewide Accounting System -- $8 million

The $33.6 million appropriated to the Comptroller of Public Accounts for allocation to state agencies for implementation of the Uniform Statewide Accounting System (USAS) was reduced by $8 million, to $25.6 million. The reduction assumes that each state agency has sufficient funds in its operating budget to implement the new statewide accounting system.

Adult Probation Commission -- $3.2 million

The $5.1 million allocated to the Adult Probation Commission from the $84.9 million appropriation for capital outlays for acquisition of computer equipment and software was reduced by $3.2 million, to $1.9 million.

The reduction will eliminate funding for a statewide computerized case-management system to keep track of probationers. Local probation agencies are expected to establish their own systems and share data instead. The reduction is not intended to affect probation services.

Appropriation for Public Education

SB 11 appropriated an additional $528 million for public education for fiscal 1990-91.

The agency-appropriation reductions in SB 11, totaling an estimated $59,526,199 in general revenue, have been transferred to public education. All amounts in the Economic Stabilization ("Rainy Day") Fund (an estimated $42.4 million in fiscal 1990-91) also were appropriated to public education.

An additional $456,629,020 was appropriated from the General Revenue Fund for the state share of the Foundation School Program (FSP) for the 1990-91 school year. Another $61,290,980 was appropriated to fund a "hold-harmless" provision in SB 1, which provides that no school district will receive less state aid for the 1990-91 school year than it would have received under current law. If the "hold harmless" funds fail to cover the provision, the commissioner of education will proportionately reduce each district's entitlement. The total of the $517,920,000 appropriated from the General Revenue Fund was reduced by the amount transferred from other agencies ($59.5 million) and from

the Rainy Day Fund ($42.2 million), which changes only the source of the additional funding for public education, not the amount appropriated.

An additional $5 million was appropriated from general revenue for a statewide inventory of school facilities in fiscal 1990, with any balances carried over to fiscal 1991.

An additional $5 million was transferred from general revenue to the new Public Education Development Fund, created by SB 1. Under SB 1 the money in the fund may be disbursed to the Educational Economic Policy Center, a university consortium that examines the efficiency of the public school system and the effectiveness of instructional methods and curricular programs, and to campuses with approved innovative programs. Seventy percent of the money must be for campus programs designed to improve the academic achievement of low-performing students, with priority given to programs submitted by low-performing campuses.

An additional $80,000 was appropriated from general revenue to the Texas Education Agency (TEA) to fund management and leadership training programs for education administrators.

SB 11 also allows TEA to increase the salary of its general counsel up to 10 percent above the current level of $63,000 per year if the counsel is certified in a specialty area that the commissioner of education has found to be directly related to the general counsel's duties.

Funds for Social-Service Agencies

SB 11 appropriates to the Texas Department of Mental Health and Mental Retardation (TDMHMR), the Texas Department of Health (TDH) and the Texas Department of Human Service (DHS) an additional total of $100 million in general revenue and $9.6 million in other revenue for the current budget period.

The appropriation includes $25.3 million in general revenue in fiscal 1990 and $74.7 million in fiscal 1991 (including $3.46 million in federal and other third-party receipts appropriated to TDMHMR that otherwise would be deposited in the General Revenue Fund). The agencies are allowed to transfer appropriations between certain line-items within their budgets, and the bill changes the amounts transferred to certain funds within the agencies.

Texas Department of Mental Health and Mental Retardation (TDMHMR)

To cover compliance with the settlement agreements covering the R.A.J. and Lelsz lawsuits (in which the state pledged, under federal court supervision, to upgrade conditions in mental health and mental retardation facilities), TDMHMR received an additional $13 million from general revenue for fiscal 1991, which must be spent in the first six months of fiscal 1991. TDMHMR also is required to ask the 72nd Legislature for an emergency appropriation to comply with court orders and the levels of service specified in the General Appropriations Act.

From the proceeds of bonds issued under SJR 24, approved by the voters in 1989 (Art. 3, sec. 49-h of the Constitution), $6.1 million was appropriated for conversion of "open-bay" dormitories in state schools in order to meet federal standards and for other court-ordered construction, repair and renovation projects. The department also is allowed to transfer up to $4 million to any other of its line items from its current appropriation for capital outlay.

Also appropriated to TDMHMR were the federal social security reimbursement payments and third-party receipts that would otherwise be considered general revenue (approximately $3.5 million).

TDMHMR no longer must obtain Legislative Budget Board approval to spend funds appropriated for aftercare of state hospital clients and community-based facilities for mentally retarded clients. However, a plan for meeting the criteria for aftercare set by the federal court in the R.A.J. case still must be submitted by the department to both the Legislative Budget Board and the governor. Also, a mechanism will be provided for the Governor's Office or the Legislative Budget Office to reject any proposed expenditure by TDMHMR through Aug. 31, 1991.

Texas Department of Health (TDH)

The health department received a total of $23.9 million in new appropriations from general revenue. The total includes $10.9 million for fiscal 1990 and $13 million for fiscal 1991 for the Chronically Ill and Disabled Children's (CIDC) program.

The additional appropriation will allow TDH to continue to provide medical services to 12,000 to 16,000 children from low-income families who suffer from birth defects, cancer, AIDS and other chronic diseases or conditions. The CIDC program faced an immediate deficit of over $30 million, and the department was

prepared to cut about 4,000 children from the program and to refuse aid to new clients.

The department is required to coordinate the claims-payment process for the CIDC program with that for Medicaid, to receive the maximum federal Medicaid payments.

SB 11 states the intent of the Legislature to keep eligibility for the CIDC program at 200 percent of the federal poverty level and that the 72nd Legislature is to appropriate funds for this purpose. TDH is authorized to transfer fiscal 1990 funds to the CIDC program in order to maintain eligibility at 200 percent.

SB 11 also states that the Legislature intends that TDH spend funds to maintain the level of services specified in the General Appropriations Act.

A mechanism will be provided for the Governor's Office or the Legislative Budget Office to allow rejection of any proposed expenditure by TDH for the CIDC program, through Aug. 31, 1991. However, a cap limiting to fiscal 1989 levels expenditures for administrative costs of the CIDC program was removed.

Unobligated funds appropriated for the Omnibus Health Care Rescue Act for fiscal 1990 were appropriated for the same purpose for fiscal 1991.

Texas Department of Human Services (DHS)

DHS received an additional $59.6 million in general revenue and $3.5 million from other sources. The additional appropriation to DHS is intended to reduce a projected $200 million-plus, state-fund deficit for the current budget period. (The projected deficit had been reduced slightly when Governor's Office transferred $8 million from its deficiency and emergency grants account, and the federal government approved a one-year delay in primary home care services, saving $1.8 million, but a projected state-fund deficit of at least $22 million for fiscal 1990 and $178 million for fiscal 1991 remained.)

The budget shortfall at DHS resulted from changes in federal law and other unforeseen circumstances. For example, the federal eligibility requirements for indigent pregnant women and children were broadened. Health care agencies that receive DHS payments must pay their employees the federal minimum wage, which recently was increased. Also, the number of DHS clients has increased markedly.

DHS programs that were expected to be cut or curtailed in fiscal 1990 without an additional appropriation included dropping payment for care of 50,000 indigent elderly in primary-care homes and nursing homes and services to 26,000 mothers and children under the Women, Infants and Children (WIC) program. Other services that would have been reduced or dropped included payment for prescription drugs, hearing aids and eyeglasses, "purchased health" programs that cover costs for ambulatory surgical centers, birthing/ maternity centers and chiropractic services, treatment for troubled teenagers and family violence counseling. Insufficient funding was available in fiscal 1991 to restore these cuts.

An additional $14.4 million was appropriated from general revenue to DHS for fiscal 1990 and an additional $45.2 million was appropriated from general revenue for fiscal 1991, to allow DHS to maintain services at the levels established by the 71st Legislature during the 1989 regular session and to comply with federal requirements enacted since then. DHS also received an additional $3.5 million for fiscal 1990-91 from the Oil Overcharge Fund to assist low-income people with utility and transportation expenses.

The department is allowed to transfer for spending in fiscal 1990 up to $16 million in fiscal 1991 funds appropriated for purchased health services in order to maintain current service levels, with the prior approval of the governor and the Legislative Budget Board.

The department also is required to report by Sept. 1, 1990 to the governor and the LBB on its remaining budget shortfall for the current budget period. The report must include information on any funding transfers made, cost-containment procedures undertaken and efforts to pursue federal or third-party funding.

SB 11 states legislative intent that DHS maintain the level of services specified in the General Appropriations Act.

Other provisions

SB 11 earmarked Federal State Legalization Impact Assistance Grants (SLIAG) to be used for the CIDC program in TDH, for compliance with existing court settlements, improvements in client care and expansion of community services in TDMHMR and for purchased health services in DHS.

The State Purchasing and General Services Commission is allowed to carry over to fiscal 1991 any unobligated and unexpended balance remaining from its $400,000 appropriation in fiscal 1990 to establish a child care center for state employees in the Capitol Complex area.

The Bond Review Board may carry over to fiscal 1991 any unobligated and unexpended balances from fiscal 1990.

The appropriation to the State Board of Insurance to implement the new workers' compensation law enacted during the second called session in 1989 will take effect immediately, and any unobligated and unexpended balances from fiscal 1990 may be carried over to fiscal 1991.

The appropriation to the comptroller for payment of miscellaneous claims also may be used to pay eligible expenses for outside legal counsel appointed to defend an indigent prison inmate, if the appointment occurred before Sept. 1, 1989. The statutory limit on miscellaneous claims does not apply to the funds transferred.

FISCAL IMPACT
(in millions)

Revenue Increase from HB 4, HB 5 and HB 6:		
Tax increases	$511.4	
Fee increases	14.7	
Total		$526.1
Appropriation for Social Services:		- 100.0
		426.1
Revenue increase from SB 11:		
Appropriation transfers	59.5	
Rainy Day Fund	42.4	
Total		+ 101.9
		528.0
Appropriation for Public Education:		- 528.0
Net Revenue Change		0.0

SB 1 -- SCHOOL DEREGULATION, ACCOUNTABILITY AND ADMINISTRATION

In addition to revising the school-finance system, SB 1 makes numerous changes affecting school administration and operations. The changes are intended to give schools and school districts more local control and administrative flexibility (deregulation), while providing a way to measure and compare how students have met education goals and objectives (accountability).

Schools will be judged and accredited on how they perform on a set of specific measurements known as academic excellence indicators, including student test results, high-school graduation rates, student attendance and enrollment in advanced academic courses, to be established by the State Board of Education (SBOE). Schools and districts that meet or exceed expectations will be subject to less state regulation. Also, almost all state administrative rules concerning public education will "sunset," or expire, over three years, forcing a review of their continued need.

Through a collaborative effort of school administrators, teachers, parents and community leaders, public schools are to set education goals based on the academic excellence indicators. School boards will be required to publish an annual performance report, or "report card," showing the progress each campus is making toward reaching its goals. "Exemplary" schools will be rewarded with less state regulation, and other schools that perform well will have an enhanced opportunity to obtain waivers of certain state requirements. Schools that fall below expectations will be subject to all state regulations. Those that consistently fall far below expected performance levels will, as a last resort, be taken over by the state or consolidated with other school districts.

Administration and implementation of public education policy at the state and local levels also has been changed in an attempt to promote greater accountability and broader responsibility. The governor will appoint the commissioner of education from among nominees submitted by the SBOE. The Legislative Education Board (LEB) will have broader authority to monitor the state education system and to amplify the Legislature's intent concerning education law. On the local level, principals will have expanded authority over the schools they administer, and school boards will be required to consult with staff members elected by their peers to represent their interests.

SB 1 also creates several new programs designed to encourage local innovation. Schools will have the option of operating on a year-round basis, with shorter vacation periods throughout the school year replacing a long summer break. Schools will be encouraged to try innovative programs, and a new Public Education Development Fund will provide state financial assistance for such programs on a competitive basis.

A tuition assistance grant program will, if funded, help students from low-income families attend public and private institutions of higher education in Texas. Also, high-achieving students will be allowed to take college courses in high school for both high school and college credit.

Accountability

School performance reports ("report cards")

Starting with the 1991-92 school year, SB 1 will require school boards to publish annual performance reports (often referred to as "report cards") showing campus progress toward stated goals.

Each school board already is required to publish an annual performance report for the district that describes educational performance and provides certain financial information. The report requires an evaluation of educational quality on each school campus, based on information such as scores on norm-referenced tests, instructional costs, attendance and dropout rates, and class size.

Each school principal -- with the aid of the professional staff of each campus, parents and community leaders -- will set the school's performance objectives, which must be approved by the district school board. Performance objectives will be set for each of the academic excellence indicators adopted by the SBOE. Objectives also will be established for special needs students, i.e. those with physical or mental handicaps, learning disabilities or language deficiencies.

Each district school board must hold a public hearing to discuss the reports with members of the community. Notice of the hearing must be sent to property owners and parents in the district. After the hearing, the report must be widely disseminated within the district, in a manner to be determined by the school board.

The performance reports are to compare the performance of each campus to that of campuses with similar wealth and demographics and compare the district to other school districts statewide. The reports also are to compare a district's actual performance and its expected performance, taking into account the district's wealth and demographics. The reports must include comparisons provided by the TEA on attendance and dropout rates, instructional and administrative costs, information on school employees, employment trends and employee turnover, as well as teacher ratios by grade groupings and by program and performance on all of the academic excellence indicators adopted by the SBOE for both campuses and districts.

State-mandated norm-referenced test

Beginning with the 1991-1992 school year, all students in Grades 4, 6, 8 and 10 will be required to take a nationally recognized norm-referenced test, with costs borne by the state. The norm-referenced test adopted by the SBOE must cover reading, mathematics, language arts, science and social studies and measure higher-order thinking skills appropriate for the age and grade of the students. The normative data used must fairly represent all minority and socio-economic groups. (Norm-referenced tests compare student performance with that of others who took the test -- the norm group. A criterion-referenced test compares performance with a predetermined criteria -- such as a passing grade of 70 on a 100-point scale.)

Students already are required to take a state-mandated, criterion-referenced test, which includes a norm-referenced section, in Grades 5, 7, 9, 11 or 12 and as an "exit" test for high school graduation. (A new criterion-referenced test will be given starting with the 1990-91 school year. The new test, the Texas Assessment of Academic Skills, or TAAS, replaces the Texas Educational Assessment of Basic Skills, or TEAMS, test, which focused on minimum skills. The TAAS test is intended to measure a broader range of skills.)

Academic excellence indicators

SB 417, the TEA sunset bill enacted during the 1989 regular session, requires the SBOE to develop a set of performance indicators. The indicators are to be used in accreditation and to distribute monetary awards through the Education Excellence Program in the Governor's Office to campuses or school districts as a reward for academic improvement and for implementing model programs designed to keep at-risk students in school. (Two

subcommittees of the SBOE Advisory Committee for the Development of Performance Indicators are working on a proposed set of indicators.)

SB 1 requires that the performance indicators, renamed "academic excellence indicators," include achievement test results, national comparative test results, high-school graduation rates, student attendance, enrollment in advanced academic classes. Differences in the various indicators must be tracked from year to year, taking student mobility into consideration. The academic excellence indicators are to be adopted by the SBOE with the advice of the LEB and reviewed every two years by the Educational Economic Policy Center.

Awards under the Education Excellence Program will be based primarily on performance on the academic excellence indicators and the campus objectives.

The SBOE must adopt the academic excellence indicators by Jan. 1, 1991. The TEA will have a pilot indicator system during the 1990-1991 school year, comparing district and campus performance results with results of scheduled accreditation visits. The indicators also will be used in appraising the performance of school principals, beginning with the 1991-1992 school year.

Accreditation

Rating academic performance. Beginning with the 1991-1992 school year, the main consideration in rating school districts for accreditation will be adequate performance on the academic excellence indicators. Performance will be compared to a projection of expected performance for purposes of evaluation, accreditation and determination of exemplary status.

The TEA annually will review the performance of each district and campus on the academic excellence indicators. The TEA is to rate each school campus in a district based on its performance on the academic excellence indicators. The agency may conduct on-site evaluations of certain campuses with low performance in areas such as student performance, attendance and dropout rates to determine if any specific action should be taken to improve performance.

A new criterion for school district accreditation will be the relation between the academic excellence indicators and the campus performance objectives established by each school. The TEA also is to evaluate how campus performance objectives are

established and the progress made towards achieving those objectives. Other new accreditation criteria are the effective use of technology to enhance student achievement and the effectiveness of a district's campuses, based on the most current criteria identified by research on effective schools.

Former accreditation criteria eliminated by the new law include the correlation between student grades and efforts, board member training, effectiveness of attendance improvement efforts, drug abuse prevention program effectiveness, and parental and community involvement.

Beginning with the 1990-91 school year, the accreditation ratings of "warned" and "unaccredited" are to be replaced with a new rating of "academically unaccredited." (Prior to enactment of SB 1, the accreditation ratings were: "exemplary," "recognized," "accredited," "accredited advised," "warned" and "unaccredited.") SB 1 eliminated a previous restriction limiting the percentage of districts rated "exemplary" to no more than 40 percent of those districts rated "recognized." The accreditation rating of a district or campus may not be lowered solely on the basis of size.

At its July 14 meeting the SBOE declared that all districts previously rated as "warned" will be rated as "academically unaccredited" as of Sept. 1, 1990. The TEA must visit and provide technical assistance to these districts at least annually.

Unaccredited school districts and campuses. SB 1 gives the commissioner of education added authority to apply sanctions to school districts and campuses that do not meet accreditation standards. The authority to revoke a district's accreditation was transferred from the SBOE to the commissioner.

The commissioner may impose accreditation sanctions against individual campuses within a district rated "accredited advised" or "academically unaccredited," including ordering the district board to take certain actions concerning campus operations or appointing a master or management team to run the campus.

A monitor, master, or management team assigned by the commissioner to a district or campus has authority to approve or disapprove any actions by the school board, the superintendent or the principal.

Oversight by a management team, annexation to another district or operation of the district by the state have been

added to the possible sanctions against districts that fail to meet accreditation criteria. A district rated "academically unaccredited" for two years may be annexed to another district or become a state-operated school district.

The commissioner may order one or more school districts to annex a school district that has been unaccredited for two years. The district cannot be joined to another district unless a prior educational and financial impact study has found that annexation will not adversely affect the receiving district. The local fund assignment of the receiving district will be reduced, for five years, based on the proportionate increase in its student population. (In effect, this means a proportionate increase in state aid.) A receiving district also will be entitled to additional state aid to cover the amount by which its additional annual debt service due to assuming the debts of the annexed district exceeds the adjustment in its local fund assignment. However, the revenue raised by the receiving district in levying its debt-service tax rate on property in the annexed district will be subtracted from its extra state aid.

If a district is rated academically unaccredited for two years, the commissioner may suspend its school board and have the district operated by the state. A state-operated school district will be run by an appointed board of managers and district superintendent, who will serve terms up to two years. Depending on the annual progress of the district, the commissioner may either terminate the suspension or annex the district to another district.

Comptroller review of school district budgets

Beginning Sept. 1, 1991, the state comptroller will have the authority periodically to review the effectiveness and efficiency of school-district budgets.

Uniform school accounting systems

Each school district must use a uniform accounting system adopted by the commissioner of education for data to be reported for the Public Education Information Management System, which collects data used in the school-finance formulas.

Administrative efficiency report and administrator training

The commissioner of education is to study the best way to report and monitor the proportion of resources that school districts allocate to administrative costs, including

administrator-to-teacher ratios. The study also is to include a description of average efficient administrative expenditures by districts, considering district size and demographics. The TEA is to provide the report, with recommendations, to the LEB and the Legislature before each regular legislative session, and the study is to be used in determining the accountable costs of education for school-finance purposes.

The TEA is to introduce management and leadership training programs for administrators. SB 11, which appropriated additional funds for public education, included $80,000 to finance the training programs.

Public education goals

SB 1 establishes six goals for public education: (1) All students should have an opportunity to benefit from an appropriate education by closing the gap between educationally disadvantaged students and others, and dropout prevention efforts should raise the graduation rate to 95 percent of students entering the seventh grade; (2) the state should be within national norms for student performance; (3) all students should be provided a balanced and appropriate curriculum; (4) qualified and effective personnel should be recruited and retained and competitive salaries ensured, especially for staff in areas of critical shortage; (5) the organization and management of all levels of the education system should be productive, efficient and accountable; (6) teaching and administration should be improved through research, demonstration programs, local initiatives and technology.

Deregulation

Exemptions for exemplary districts and campuses

School campuses or districts with the top accreditation rating of "exemplary" are to be exempt automatically from all state education requirements and prohibitions, with some specific exceptions. No districts or campuses will be rated as "exemplary" until Sept. 1, 1991 because the academic excellence indicators, which are to serve as the basis for this accreditation rating, will not be adopted by the SBOE until Jan. 1, 1991. Nevertheless, SB 1 requires the SBOE to provide as much regulatory relief as possible to high-performing campuses and districts beginning in the 1990-1991 school year.

"Exemplary" districts and campuses will not be exempt from criminal laws or any federal laws or regulations, including

special education or bilingual education requirements. They also will not be exempt from state requirements and prohibitions concerning: (1) curriculum essential elements (except the methodology used by a teacher and time spent by a teacher or student on a particular task or subject); (2) restrictions on extracurricular activities; (3) health and safety; (4) competitive bidding; (5) elementary school class-size limits; (6) removal of disruptive students from the classroom; (7) suspension or expulsion of a student; (8) programs for at-risk students; (9) prekindergarten programs; (10) minimum graduation requirements; (11) employee rights and benefits; or (12) textbook selection.

Although an "exemplary" campus will not automatically be exempt from elementary class-size limits (currently 22 students per teacher for kindergarten through fourth grade), the commissioner of education may exempt a campus from the size limits if the campus submits a written plan showing that the exemption will not harm academic achievement. The commissioner must review achievement levels each year and may revoke the exemption if achievement levels decline.

Waivers

Any school campus or district may ask the SBOE for a waiver of a state requirement or prohibition that inhibits student achievement. A waiver application must include a written plan, approved by the school board and developed by the principal or superintendent with the faculty of the campus or district, stating achievement objectives and explaining how the particular requirement or prohibition inhibits reaching the objectives.

Criminal laws or federal laws or rules, including special education or bilingual education requirements, may not be waived. The same list of state requirements and prohibitions as for "exemplary" schools and districts also may not be waived, with the exception of certain textbook-selection requirements.

Any district or campus may seek permission to select or purchase a textbook not on the state-adopted multiple list. The textbook may not cost more than the most expensive book on the state-approved list and must be used for the same number of years as a state-approved book. The district will purchase the book, and the commissioner of education will pay the allowable cost.

Waivers may last up to three years. Then, if the campus or district has fulfilled its achievement objectives, the SBOE may

grant an exemption that will remain in effect unless the SBOE determines that achievement levels have declined.

In considering exemptions or waivers, the SBOE is to provide as much regulatory relief as practical and reasonable, beginning in the 1990-1991 school year. The TEA will be required to monitor and evaluate deregulation of campuses and districts and report annually on the effect on student achievement to the SBOE, the LEB, the governor, the lieutenant governor, the speaker and the Legislature.

Sunset of State Board of Education rules

SB 1 will void certain administrative rules previously adopted by the State Board of Education and found in Title 19 of the Texas Administrative Code. The SBOE may reconsider the voided rules and readopt or revise them. (Under its revised rulemaking powers, the SBOE must cite legislative authority for any rules it adopts.)

Chapters 29 through 74 and Chapters 76 through 93, adopted before Sept. 1, 1990, will be void as of June 1, 1991. These chapters cover areas such as the structure of the Texas Education Agency, the State Board of Education, the Office of the Commissioner of Education, certain requirements for school districts, regulation of private and proprietary schools, and requirements for bilingual education, driver education, media services, textbook adoption, gifted and talented student programs, compensatory education and career education.

All rules under Chapter 94 through 133 adopted before Sept. 1, 1991 will be void as of June 1, 1992. These chapters cover areas such as accreditation, student testing, Foundation School Program calculations, budgeting, reporting and auditing of school districts, federal funding, salaries, student attendance and student discipline.

All rules adopted before Sept. 1, 1992 under Chapters 134 through 181 will be void as of June 1, 1993. The areas covered under these chapters include teacher education, teacher certification, minimum teaching duties, paperwork reduction, personnel rights and development, hearings and appeals, relationship with the federal government and the University Interscholastic League, the rulemaking process and hearings and appeals.

The SBOE may not designate the methodology to be used by a teacher or the time to be spent by the teacher or a student on a

particular task or subject. Current curriculum rules regarding teaching time and methodology are void as of Sept. 1, 1990. However, SB 1 does not void other Title 19 chapters concerning curriculum.

Administration

State Board of Education (SBOE)

The SBOE, the 15-member board elected from single-member districts for staggered four-year terms, will share its policymaking and planning functions for public education with the commissioner of education, the governor and the Legislature. The SBOE will continue to establish rules for the operation of the TEA, to act as the State Board for Vocational Education and to invest the income produced from the Permanent School Fund as required by Art. 7, sec. 4 of the Texas Constitution.

The SBOE will continue to implement legislative education policy. However, it must consider any comments made by the LEB before adopting rules and must cite legislative authority for its actions.

The SBOE no longer will propose education budgets to the Legislature. The authority to adopt the state public education operating budget was transferred to the commissioner of education. The commissioner is to submit the proposed budget to the SBOE and the LEB for review before presenting it to the governor and the Legislative Budget Board.

The SBOE will hold at least four meetings a year, instead of six as under prior law.

The governor will continue to appoint the chair of the SBOE, but SB 1 requires that the appointment receive the advice and consent of the Senate.

Legislative Education Board (LEB)

The LEB is composed of the lieutenant governor, the speaker, the chairs of the House Public Education Committee, Senate Education Committee, House Appropriations Committee and Senate Finance Committee, two representatives appointed by the speaker and two senators appointed by the lieutenant governor. It reviews the implementation of public education laws by the SBOE and the TEA. SB 1 gives the LEB more specific authority to establish legislative intent concerning education law.

If the LEB finds that SBOE rules conflict with legislative intent, it may request more information from the SBOE, ask the SBOE to reconsider its action, or notify the governor, the lieutenant governor, the speaker and the Legislature of the perceived conflict.

The LEB is to oversee and review the implementation of education policy made by state agencies concerning fiscal matters, academic expectations, and evaluations of program cost effectiveness. The LEB may appoint advisory committees and hire its own staff or use staff of the Legislative Council or the Legislative Budget Board (LBB). Any staff hired by the LEB must be available for use by all legislators.

Commissioner of education

The SBOE will share with the governor the power to appoint the commissioner of education. Previously the SBOE alone appointed the commissioner, who served at the pleasure of the board. Under SB 1, the governor will appoint the commissioner from three nominees submitted by the SBOE. The SBOE will continue to submit nominees to the governor until one is appointed. The commissioner's appointment must be confirmed by the Senate. The governor will be able to remove the commissioner, with the consent of the Senate, either upon the request of two-thirds of the SBOE or for good cause.

The commissioner will serve a four-year term that closely coincides with the governor's term. The first commissioner named under the new procedure will serve from March 1, 1991 until March 1, 1995.

The commissioner will continue to execute a bond of not more than $50,000, conditioned on faithful performance of the duties required by the laws of Texas. But under SB 1, the commissioner no longer is bound to faithful performance of duties required by the rules and regulations of the SBOE.

Local decision-making

Authority of principals. Under SB 1 principals must approve all teacher and staff appointments from a pool of applicants selected by the district or meeting hiring requirements established by the district and based on criteria developed by the principal after informal consultation with the faculty.

The performance of a principal's school on the academic excellence indicators and the campus objectives will be

considered in the principal's appraisal, including performance gains made by the campus and how those gains have been maintained.

Professional staff involvement. Each school board must set policies for involving professional staff in establishing and reviewing the district's goals and objectives. The staff representatives are to be elected by the district's professional staff; two-thirds of the representatives must be classroom teachers. No member of the staff may be forced to participate as either a voter or a candidate.

The board must hold regular meetings with the elected staff representatives. However, the board will not be prohibited from meeting with other groups and teachers, and its power to manage and govern the district will in no way be affected or limited. The new requirement is not to be construed as creating a new cause of action or as requiring collective bargaining.

Hearing on teacher contract nonrenewal. School boards may designate an impartial hearing officer to develop a record concerning nonrenewal of a teacher's contract. The board will decide on nonrenewal based on a review of the record developed by the hearing officer and on oral arguments by the teacher and the district.

Minority recruitment programs

The education commissioner and the Texas Higher Education Coordinating Board are to create a minority-recruitment program. The program may include tuition or grant programs and other programs, such as mentor programs and job fairs, to encourage minority-group members to become professional educators.

Modern teaching practices

Training in the use of technology and modern classroom teaching practices will be required for teacher certification. Beginning Jan. 1, 1991, educational entities that train teachers -- such as institutions of higher education, regional education centers and teacher centers -- will be required to provide training in the use of technology and modern classroom teaching practices.

Placement on teacher salary schedule

In determining placement of a teacher on the salary schedule, the teacher will be credited for each year of

experience, regardless of whether the years were consecutive, as long as the placement is not above the step where the teacher would have been placed if service had been continuous.

Appeals of no-pass, no-play suspension

A student suspended from extracurricular activities for failing to make a grade of 70 on a scale of 100 in a single class ('no pass, no play') may appeal the suspension to the commissioner of education. An appeal is not considered a contested case, requiring application of the Administrative Procedures Act, if the issues involve the student's grade or the school district's grading policy. The commissioner designate another person or entity to hear the appeal. The commissioner's decision may not be appealed to district court except on grounds that the decision was arbitrary or capricious. No new evidence may be introduced on appeal.

School district land-development standards

At the request of a school district, a city that has annexed territory for limited purposes must enter into an agreement concerning revenue fees, review periods, land development standards and alternative water-pollution control methodologies for school buildings. If no agreement is reached within 120 days, the matter will be submitted to an independent arbitrator. When adding temporary classroom buildings to existing campuses, a school district is exempt from all land development ordinances.

Energy conservation

School boards may enter into multi-year contracts for energy conservation measures, on a request-for-proposal basis, as long as the savings in energy and operating costs over 10 years would be greater than the cost of the contract.

Special Programs

Year-round schools

Schools may operate on a multitrack school year, with groups ("tracks") of students and teachers taking vacation on a staggered schedule throughout the year. The SBOE is to adopt rules for operation schools on a year-round, multitrack basis by Jan. 1, 1991.

SB 1 repealed the prohibition against starting a school term earlier than the Monday of the calendar week in which Sept. 1 falls. This change will allow a school term to begin at any time.

Innovative programs

Innovative programs are to be developed by campus, rather than by district as under prior law, and selected on a competitive, peer-review basis by the Program Advisory Committee appointed by the Educational Economic Policy Committee. Final program approval will be granted by the SBOE and, if a program requires the expenditure of state funds, by the LEB. Campus applications must be approved by the district's school board. The SBOE also will retain authority to waive certain laws and rules for innovative programs.

Campuses with approved innovative programs may receive disbursements from the new Public Education Development Fund. Seventy percent of the money disbursed must be for projects designed to improve the academic achievement of low-performing students, with priority given to projects submitted by low-performing campuses. SB 11, which made additional appropriations for public education, transferred to the new fund $5 million in general revenue for fiscal 1990-91.

SB 1 lists 24 areas for which innovative programs may be approved. Included in the list are school-year restructuring, alternative learning environments, parental literacy, decentralization of organizational decisions, instructional technology, student and parental choice among public schools, child care, early childhood education, an extended school day, teacher and administrator development, continuous progress education, student-teacher ratios below 22:1 in elementary grades, use of elementary school guidance counselors and social workers in dropout prevention programs, career development for students, bilingual training, parental involvement with schools, school-age latch-key children, private-sector volunteer efforts, coordination of school activities with community health and human services programs, magnet schools, interdisciplinary curriculum, peer tutoring, counseling of families of at-risk students, and comprehensive coordination with health and human service delivery systems.

College credit

The commissioners of education and higher education are to develop recommendations by Feb. 1, 1991 for a statewide program

to allow high school students to take college courses for both high school and college credit. The recommendations are to include a method for apportioning state funds for the student's education between the high school and the college.

Texas Tuition Assistance Grant Program

A new Texas Tuition Assistance Grant Program is to provide money grants to pay student tuition at Texas public and private institutions of higher education, starting in fall 1991. (The Texas Assistance Grants Program, created in 1975 but never funded, was repealed.)

The Texas Higher Education Coordinating Board is to set student eligibility requirements by Jan. 1, 1991. Eligible students will include Texas residents from low- to middle-income families with financial need, enrolled in a full course load, who have applied for financial assistance and have graduated from high school within the previous two years with an 80 or higher grade average. Graduate students and persons convicted of felonies or crimes involving moral turpitude within less than two years of their parole or probation will not be eligible.

The coordinating board will make the grants, up to the total amount appropriated for the program, to the institutions, not to the individual students. Students will lose the right to future grants if they do not make steady progress towards obtaining a baccalaureate degree, do not maintain full-time enrollment status for at least two semesters in any academic year, have a grade average in the lower 50 percent of full-time students at the institution or are convicted of a felony or crime of moral turpitude within less than two years of their probation or parole.

Exemption from compulsory attendance for GED enrollment

SB 1 exempts from compulsory school attendance persons enrolled in GED courses to obtain a high-school equivalency diploma if they are at least 17 years old or are 16 years old and were enrolled at the recommendation of a public agency with supervision over them.

Alcohol and drug abuse programs

The Commission on Alcohol and Drug Abuse (CADA) is to provide a statewide peer assistance and leadership system and a full-time peer program coordinator for each regional education

service center. The TEA and CADA are to design a substance abuse assessment and intervention program for the public schools.

Study of nonacademic youth programs

A special study committee appointed by the governor, the lieutenant governor and the speaker is to develop by Jan. 1. 1991 a plan to remove from the schools responsibility for nonacademic problems of youth and to coordinate youth services into a community effort.

Single-member districts for Austin ISD

The Austin ISD will be required to elect a nine-member school board -- seven elected from single-member districts and two (the president and vice-president) elected at-large. (The district currently elects seven members, all at-large.)

OTHER NEW LAWS

General Review of the 1990 Called Sessions

The 71st Legislature has met in six called sessions (two in 1989 on workers' compensation and four in 1990 on public education) lasting a total of 152 days, setting a new record. The previous record was held by the 41st Legislature, which met in five special sessions for 138 days in 1929-30.

Third called session

No bills were enacted during the third called session, Feb. 27-March 28. The Senate approved a public education bill, SB 1, but it failed to pass in the House.

Fourth called session

Five bills were approved by the Legislature during the fourth called session, April 2-May 1, but none became law.

The governor vetoed HB 150 by Hury, which would have increased the state sales-tax rate from 6 percent to 6.5 percent. As a result, SB 1 by Parker, et al., the public education bill approved by the Legislature, could not be certified by the comptroller under Art. 3, sec. 49a of the Texas Constitution, because there was insufficient revenue to cover the additional appropriation for public education included in the bill. When a bill cannot be certified, the comptroller returns the bill to the house where it originated, and it is treated as if it had not passed. SB 1 was the first bill not to be certified since 1953.

Three bills -- HB 91, HB 131 and HB 137, all by Rudd, shifting various appropriations to public education -- were enacted without the governor's signature but failed to become law because they were contingent on final passage of SB 1.

Fifth called session

Six bills were approved by the Legislature during the fifth called session, May 2-30, but only two became law -- HB 24 by Counts, which changes the election procedures for the Nolan County Hospital District board, and SB 35 by Sims, which allows spending of funds from the settlement of a dispute with New Mexico over use of water from the Pecos River.

The governor vetoed SB 1 by Parker, et al., the public education bill. The Senate voted to override the veto, but the motion in the House failed to receive the necessary two-thirds vote. As a result, two bills that were contingent on final passage of SB 1 failed to become law: HB 40 by Caperton, transferring money from the "Rainy Day" Fund to public education, which was enacted without the governor's signature; and SB 42 by Caperton, limiting the debt service paid on certain state bonds, which the governor signed.

After the Legislature adjourned, the governor also vetoed HB 129 by Hury, which would have raised the state sales-tax rate from 6 percent to 6.5 percent.

Sixth called session

During the sixth called session, June 4-7, the Legislature passed 33 bills. The governor vetoed HB 9 by McCollough, allowing county road districts to refinance their bonds. (For an analysis of an identical bill, HB 34 by McCollough, fifth called session, see House Research Organization Daily Floor Report, May 24, 1990.) The governor signed the 32 other bills, which are summarized in this report.

Criminal Justice

New prison beds, appropriation transfers

SB 13 by Dickson, sixth called session, appropriates $130,186,525, to be raised from the proceeds of bonds, to the institutional division (prisons) of the Texas Department of Criminal Justice (TDCJ) to acquire, construct and equip one 2,250-bed Michael prototype prison unit ($64.2 million) and three 1,000-bed regional centers ($22 million each). The appropriation is to be financed by the Texas Public Finance Authority by issuing general-obligation bonds authorized when Texas voters approved SJR 24 in 1989.

On July 10 the Texas Board of Criminal Justice decided to put the new 2,250-bed facility in Polk County, and the 1,000-bed units in Hondo, Lamesa and Pampa. The new Polk County unit will house those death row inmates who do not participate in the work programs offered at the Ellis I Unit in Huntsville, where the existing death row is filled beyond its 300-inmate capacity.

SB 13 appropriates the unexpended balance of funds appropriated previously for prison construction to the institutional division of TDCJ for various minor construction

needs. Also, unexpended funds appropriated for prison construction by HB 1477 during the 1989 regular session are reappropriated for the same purpose for fiscal 1990-91.

SB 13 also reduced by $3 million the fiscal 1990-91 appropriation to TDCJ for Project RIO (the reintegration of offenders program administered by the Texas Employment Commission to match the skills of soon-to-be-released prison inmates to available jobs). The $3 million was transferred to the Public Utility Commission (PUC) for evaluation and regulation of rates and services and agency administration. PUC unobligated and unexpended balances for fiscal 1990 were reappropriated to the commission for fiscal 1991.

Project RIO is financed mainly by federal funds, which will replace the state funds transferred to the PUC.

Revising the new criminal justice act

SB 41 by McFarland, sixth called session, clarifies and changes HB 2335 by Hightower, the omnibus criminal-justice reform law enacted during the 1989 regular session.

Pardons and paroles. Before the enactment of HB 2335, the Board of Pardons and Paroles had two functions: determining whether to release prison inmates on parole or mandatory supervision and setting the conditions for release and revocation of release; and administering the supervision and control of those prisoners released. HB 2335 sought to separate the two functions: the Board of Pardons and Paroles was to determine inmate releases, and the pardons and paroles division of the TDCJ was to supervise released prisoners.

The separation of the duties of the board and of the division made by HB 2335 was not entirely clear. SB 41 gives the Board of Pardons and Paroles -- an 18-member quasi-judicial authority appointed by the governor with the advice and consent of the Senate -- exclusive authority in determining paroles. It also clarifies that three-member panels may act for the board. The pardons and paroles division, an administrative unit of the TDCJ, has supervision and control of prisoners released on parole. SB 41 also requires quarterly meetings of the board to make clemency decisions and allows clemency meetings to be conducted by telephone conference calls. The "Board of Pardons and Paroles division" of TDCJ has been renamed the "pardons and paroles division."

Under HB 2335, removal by the governor of members of the Board of Pardons and Paroles was subject to approval by a majority of the members from each house on the Legislative Criminal Justice Board (LCJB). SB 41 eliminated the requirement of LCJB approval when the governor removes a member of the Board of Pardons and Paroles and prohibits the governor from removing a member appointed by another governor.

Other changes. SB 41 gives courts the option of requiring a defendant convicted of a felony to serve in a work program as a condition of probation. It allows either the prosecutor or the defendant, in cases in which punishment is referred to a jury, to offer evidence on the availability of community corrections facilities for punishment. It provides for a civil liability waiver for employees and officers for acts committed in connection with community restitution programs. It clarifies that pre-trial intervention fees may equal the actual cost of pre-trial intervention programs or the cost of supervising a defendant, not to exceed $500.

A provision of HB 2335 counting a fraction of eight hours of community service as a full day of jail time was repealed by SB 41. The name of the Interagency Council on Offenders with Mental Impairments was changed to the Texas Council on Offenders with Mental Impairments.

SB 41 also clarified the respective responsibilities of the Texas Department of Criminal Justice and the Department of Public Safety in maintaining computer data bases for tracking offenders through the criminal justice system. Two subsystems of the Criminal Justice Information System (CJIS) are named in HB 2335: the Computerized Criminal History (CCH) system managed by DPS and the Corrections Tracking System (CTS) managed by TDCJ. SB 41 deletes the requirement that the community justice assistance (probation) division in TDCJ develop an information management system that allows caseworkers to enter and retrieve data, requiring instead that the state-level probationer tracking system consist of data reported from local probation departments.

House amendment deleted. During its consideration of SB 41 on June 6 the House adopted an amendment providing that the TDCJ is obliged to accept from the counties only as many persons sentenced to prison as can be housed within prison-system capacity. It also provided that the counties must maintain at their own expense inmates held in county jail awaiting transfer to TDCJ. (In a lawsuit brought by 11 counties against the state, Dist. Judge Joseph Hart of Austin has ruled that the state must compensate the counties for the cost of holding convicted felons

awaiting transfer to the state prison system; an appeal of the ruling is expected.) The Senate refused to concur with the House amendment concerning TDCJ's obligation to accept inmates from counties, and a conference committee deleted the amendment.

Payment of attorneys representing indigent inmates

HB 80 by Rudd, sixth called session, requires the Texas Board of Criminal Justice to provide legal representation for indigent defendants charged with crimes committed while in custody of the state prison system. The board is required to bear all costs of such representation.

The bill also provides that when a court orders payment of fees of a court-appointed attorney, other than one provided by the board, the county in which the correctional facility is located will pay the full costs. The provision applies to appointments made Aug. 1, 1990 or later. When attorneys were appointed before Aug. 1, 1990, the county liability is limited to $250, if the inmate was originally committed to state custody for an offense in another county, and the criminal justice board must pay the remainder.

Replacing Crime Stoppers bond fee with court costs

SB 17 by Barrientos, sixth called session, changes the revenue source for funds that the Criminal Justice Division in the Governor's Office distributes to local Crime Stoppers programs, effective Sept. 1, 1990.

Crime Stoppers programs, as defined in sec. 414.001 of the Government Code, are private, nonprofit organizations that accept and spend donations for rewards to persons who report information on criminal activity and that forward such information to law enforcement agencies.

The bill repeals prior law allowing counties to charge a $2 bond fee to criminal defendants who are released on bail bonds or personal bonds. (The repealed provisions were enacted during the 1989 regular session in SB 1451 by Barrientos.) Instead, counties will charge $2 in court costs to persons convicted of offenses other than misdemeanors punishable only by fines.

Conviction will be assumed if a sentence is imposed, if the defendant receives probation or deferred adjudication or if "the court defers final disposition of the case."

A Crime Stoppers assistance account in the General Revenue Fund will replace the Crime Stoppers Assistance Fund.

Natural Resources

Pecos River Compact Program

SB 35 by Sims, fifth called session, creates the Pecos River Compact Account within the state Water Assistance Fund. The account is composed primarily of $13.8 million from the settlement of Texas v. New Mexico, litigation over the use of Pecos River water by New Mexico.

The settlement agreement approved by the U.S. Supreme Court establishes how the money is to be spent, and SB 35 implements that agreement. The money in the Pecos River Compact Account was appropriated to the Texas Water Development Board for fiscal 1990-91 for a new Pecos River Compact Program to make loans or grants for agricultural, irrigation and water quality improvement projects in Loving, Pecos, Reeves and Ward counties, giving preference to projects and studies affecting surface water irrigation in the Red Bluff Water Power Control District in the four counties.

Appropriation for the Sulphur River Basin Authority

SB 25 by Ratliff, sixth called session, directs the Texas Water Development Board to allocate $150,000 to the Sulphur River Basin Authority for operating expenses in fiscal 1990-91. The money is to come from Water Assistance Fund No. 480.

The authority, based in Mount Pleasant in Titus County and serving a 10-county northeast Texas area, was created by the Legislature in 1985. It has no taxing authority and plans to generate operating funds from user fees. The $150,000 appropriation is to be used for start-up expenses.

Revised definitions in Parks and Wildlife Code

SB 24 by Sims, sixth called session, replaces a reference to "chukar" in the definition of "pen-reared birds" with the more inclusive term "partridge" in sec. 43.071 of the Parks and Wildlife Code. The section regulates hunting or taking of pen-reared birds in private bird hunting areas.

SB 24 also includes "red foxes" in the definition of "depredating animals" in sec. 43.103 of the Parks and Wildlife

Code, which regulates management of depredating animals by use of aircraft.

SB 24 takes effect Nov. 1, 1990.

Higher Education

Junior college course duplication

SB 5 by Dickson, sixth called session, amends Education Code sec. 130.386(d), dealing with duplication of college courses. The section requires that a junior college offering a course in the district of another junior college must first determine that the other college does not offer the course. A secondary requirement is that in a county with a population of more than 115,000 (increased from 97,000 by SB 5) that has no public senior college, a junior college wishing to offer a course outside of its district also must establish that no other college or university in the county is willing or able to offer the course. After that need is established, approval must be obtained from the Texas Higher Education Coordination Board.

Taylor County (Abilene), with a population of 110,932, has no public senior college but has three private colleges. Cisco Junior College, which operates a branch in Abilene, hopes to to offer academic, as well as vocational, courses at the branch. SB 5 eliminated Taylor County from the limitation that no other institution, senior or junior, public or private, is offering a course that a junior college wishes to offer outside of its district. None of the three private institutions in Taylor County raised objections to the change.

Expansion of minority recruitment advisory committee

HB 32 by Delco, sixth called session, expands the Minority Recruitment Advisory Committee from five members to nine, effective Sept. 1, 1990. The committee advises the commissioner of education on the eligibility of programs funded by the Engineering and Science Recruitment Fund. The fund was established by HB 102, 70th Legislature, to support educational programs to assist women and minorities in preparing for undergraduate degrees in engineering and science.

HB 32 requires the education commissioner to appoint five, rather than three, members to the committee. Also, the chair of the House Higher Education Committee and the chair of the Senate Education Committee each will appoint one new member.

The two higher education committee chairs or their designees will continue to serve as ex officio members. The other committee members are to serve two-year terms expiring on Feb. 1 of odd-numbered years.

The Engineering and Science Recruitment Fund is composed of general revenue appropriated by the Legislature and federal and private funds. Under HB 32, money from the fund may go only to organizations considered exempt from federal income tax under Sec. 501(c)(3) of the Internal Revenue Code (nonprofit corporations).

Tuition payments at medical, dental and veterinary colleges

HB 47 by Hury, sixth called session, allows the governing boards of state university medical and dental schools and the governing boards of institutions with colleges of veterinary medicine to set tuition and fee payment schedules of four equal installments for medical, dental and veterinary medicine students.

Current law, enacted in 1989, specifies that students at state higher education institutions may pay tuition and fees either in a single annual payment or on a schedule of three payments: half the amount followed by two quarterly payments.

Student health center fee at UT-Austin

SB 16 by Barrientos, sixth called session, permits The University of Texas System board of regents to impose a fee on students at the UT-Austin campus to finance renovation or new construction at the student health center. The maximum fee will be $8 for a semester or 12-week summer session, $6 for a nine-week summer session and $4 for a six-week summer session. The student health services building fee will not be counted towards the total maximum student services fees of $150 that may be charged to UT-Austin students. (Students on the UT-Austin campus approved the health services fee in a referendum in spring 1990.)

Transportation

Deregulating transportation of seed cotton modules

HB 14 by Rudd, sixth called session, will exempt vehicles carrying seed cotton modules from state-adopted federal motor-carrier safety and hazardous-materials regulations, effective Sept. 6, 1990. Seed cotton modules are rectangular

bundles of newly stripped cotton that is compacted at harvesting sites and transported on cotton-module haulers, common in West and South Texas.

The Legislative Budget Office, in the fiscal note to the bill, said the exemption may render the state ineligible for continued federal funding under the Motor Carrier Safety Program. An official of the U.S. Department of Transportation Office of Motor Carrier Safety in Austin said the bill is under review.

The Federal Motor Carrier Safety Regulations apply to motor carriers engaged in interstate and international commerce. Through the Motor Carrier Safety Assistance Program (MCSAP), the U.S. Department of Transportation provides grants to states that apply the federal standards or compatible state standards to intrastate operations. The grants may be used to develop or implement such standards.

After legislators and others complained to the Texas Department of Public Safety that a proposed 1988 phase-in of a modified version of the federal rules would excessively burden private carriers -- businesses that haul their own goods -- the DPS postponed the effect of most of the motor carrier regulations until Sept. 1, 1989. The agency said the delay would allow the Legislature to reconsider the issue.

SB 1204, enacted during the 1989 regular session, added several exemptions and conditions to DPS's authority to adopt motor carrier safety regulations. Farm vehicles weighing less than 48,000 pounds gross (loaded) weight were exempted from motor carrier safety rules, unless they carry cargo that subjects them to hazardous materials regulations. (A similar agricultural exemption had been included in the postponed regulations.)

The Office of Motor Carrier Safety, which had terminated Texas' participation in the MCSAP program on May 24, 1988 for failure to adopt compatible state rules, restored the funds when revised rules took effect Oct. 1, 1989. The DPS was granted $2.5 million for federal fiscal 1990, ending Sept. 30, 1990.

Unauthorized variances in state adoption of hazardous materials regulations also can result in denial of MCSAP grants. But federal officials have not considered cotton to be a hazardous material if transported over land rather than water.

Exemption for refueling aid to disabled drivers

HB 48 by Hury, sixth called session, adds an exemption to the requirement that full-service motor-fuel stations provide full-service refueling to disabled drivers at self-service fuel prices. The exemption, effective Sept. 6, 1990, covers full-service stations that cease pump service during regularly scheduled hours for security reasons.

Under VACS art. 8613, enacted during the 1989 regular session, the requirement does not apply to facilities that have only remotely controlled pumps and do not offer full-service refueling. Also exempt is refueling service to provide "liquefied gas," which does not include gasoline or diesel fuel. Violation of VACS art. 8613 is a Class C misdemeanor, punishable by a fine of up to $200.

Transit authority annexation-election vote requirement

HB 22 by Jackson, sixth called session, changes the election-majority requirements for a town or city to become part of a rapid transit authority. Approval by a majority of those voting in the election will be required, rather than approval by a majority of all qualified voters. The change, which takes effect Sept. 6, 1990, applies to both metropolitan and regional transit authorities.

The bill was prompted by a request from the City of Baytown, which is considering an election to join the Houston Metropolitan Transit Authority.

Miscellaneous Measures

Alcoholic beverage license exemption for Sea World

HB 16 by Wilson, sixth called session, allows holders of caterer's permits to sell alcoholic beverages at Sea World of Texas in San Antonio even though the park owner -- currently Anheuser Busch -- holds an alcoholic-beverage manufacturer's license.

Under previous law, retail beer sales in the park would have been prohibited since the owner, Anheuser Busch, is a brewer. The park's previous owner, Harcourt Brace Jovanovich, had a license to sell alcoholic beverages in the park. After the park was sold to Anheuser Busch, the Alcoholic Beverage Commission did not enforce the prohibition against the new owner pending clarification of the law by the Legislature.

HB 16 prohibits holders of beer-sale permits granted under the bill from giving preference to the park owner's brands over competing brands. Preferential treatment is defined as any action that results in sales at Sea World of the owner's brands exceeding by more than 5 percent in a calendar year the percentage share of the same brands in Bexar County during the previous year. Also, the right of a caterer to sell alcoholic beverages in the park cannot be made dependent on the sales volume of a specific brand. The caterer and the park owner are not permitted to share employees, business machines or services.

The bill applies only to certain types of marine parks in counties with more than 950,000 residents, i.e. Sea World in Bexar County.

HB 16 also repeals sec. 102.02 of the Alcoholic Beverage Code, which specifies that ownership of an athletic facility by a manufacturer is not a ground for denying or canceling a retail license on the premises.

Retroactive filing by churches for property tax exemptions

HB 36 by Grusendorf, sixth called session, allows religious groups owing back taxes on certain property to file for a retroactive tax exemption. Sec. 11.20 of the Tax Code creates a tax exemption for places of worship, residences used by clergy and associated personal property.

A number of small churches failed to seek a property-tax exemption at the time when their local tax appraisal district was created, as required by law, and now face possible local enforcement of claims for payment of unpaid taxes.

Under HB 36, late applications for exemptions will be accepted only for tax years in which a religious organization has not paid taxes. Late applications will be considered only if filed by Dec. 31 of the sixth year after the tax year for which the exemption is sought, but in no event later than Dec. 31, 1991.

An exemption may be granted only if the property qualified for the exemption under the law in effect on Jan. 1 of the tax year for which the exemption is claimed. If the late exemption is approved, the unpaid tax, plus any unpaid penalties and accrued interest, must be deducted from the organization's tax bill. If the tax has been paid, it cannot be refunded. The bill takes effect Sept. 6, 1990.

Unemployment compensation exemption for natural disasters

SB 23 by Sims, sixth called session, establishes that an employer's unemployment compensation account will not be charged for unemployment insurance benefits paid to a worker whose unemployment was due to a natural disaster that resulted in a federal disaster-relief declaration. (Employers' unemployment tax rates are determined in part by "chargebacks" reflecting the number of unemployment claims filed by their former employees.)

The natural-disaster exemption applies to employees who would be entitled to special disaster-relief unemployment assistance benefits under federal law (Section 410 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act) were they not already receiving state unemployment compensation benefits.

Employers may apply to the Texas Employment Commission for a recalculation of their chargebacks to reconsider those that would not have been assessed if the new exception been in effect on April 1, 1989. The recalculation may apply beginning with the 1990 tax year. Employers may apply for recalculation no earlier than Feb. 1, 1991 and no later than April 30, 1991.

Permitting nursing students and trainees to administer medication

SB 46 by Brooks, sixth called session, permits the administration of medications by student nurses and medication aide trainees working in convalescent and nursing homes and home health agencies. This exemption to the prohibition against administration of medication by persons without a license or permit applies to graduate nurses and graduate vocational nurses with temporary work permits, student nurses enrolled in nursing programs approved by the Board of Nurse Examiners or the Board of Vocational Nurse Examiners and medication aide trainees. The bill includes procedures and fees for issuance of permits by the Texas Department of Health (TDH) for persons to administer medication to patients in home health agencies.

A September 1989 attorney general's opinion (JM-1096) had held that existing law did not allow anyone -- including student nurses, trainees or recent graduates -- to administer medication without a license or permit.

Nonsubstantive revision of various codes

SB 51 by McFarland, sixth called session, eliminates duplicate citations by renumbering sections of various statutory codes that have the same section number.

SB 43 by Brooks, sixth called session, makes various revisions to the new Health and Safety Code enacted during the 1989 regular session.

Both bills, which take effect Sept. 6, 1990, incorporate measures enacted earlier and state that they are not intended to make substantive changes in existing law.

Selling county property via sealed bids or proposals

SB 53 by Leedom, sixth called session, authorizes counties to sell real property through a sealed bid procedure rather than by holding public auctions. The bill also authorizes sale or lease transactions using sealed proposals, which may include offers other than cash.

Previously enacted requirements pertaining to leases of county real property through sealed bids were extended to apply to sales. Counties must advertise notice of intent to lease or sell real property in a general-circulation newspaper on two dates at least 14 days before any award is made. The notice must describe the property as well as the procedure by which sealed bids or proposals may be submitted. County commissioners courts may reject any and all bids submitted.

Before selling a property under the revised provision, counties must obtain an appraisal of the property's fair market value and determine a minimum bid amount, based on that appraisal. The requirement does not apply to leases.

Local Bills

Several measures concerning local districts and the jurisdiction of local officials also were enacted during the 1990 special sessions:

-- HB 24 by Counts, fifth called session, revising the election procedures for the Nolan County Hospital District board to allow election from single-member districts;

-- SB 6 by Dickson, sixth called session, allowing the city of Paint Rock to dissolve the Concho County Water Control and Improvement District No. 1 and to assume the district's assets and obligations;

-- SB 9 by Carriker, sixth called session, allowing the district attorney to perform the duties of the county attorney in Floyd and Motley counties;

-- SB 18 by Barrientos, sixth called session, establishing the Williamson-Travis Counties Water Control and Improvement District No. 1

-- SB 34 by Brown, sixth called session, allowing the Gulf Coast Waste Disposal Authority to operate a disposal system outside of the district;

-- SB 35 by Brown, sixth called session, establishing procedures for annexation or exclusion of territory by the Brazosport Water Authority;

-- SB 49 by Haley, sixth called session, revising certain civil jurisdiction of the county court-at-law in Nacogdoches County to be concurrent with that of the district court, effective Sept. 1, 1990.

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